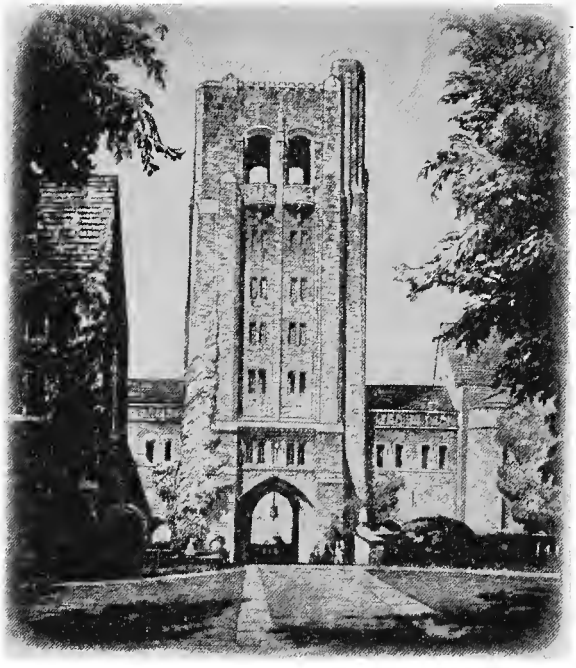

INTERNATIONALISM.

BY

HIS EXCELLENCY DON ARTURO DE MARCOARTU,

EX-DEPUTY TO THE CORTES;

AND

Prize Essays

ON

INTERNATIONAL LAW,

By A. P. SPRAGUE, Esq.,

COUNSELLOR OF LAW IN THE UNITED STATES,

AND

M. PAUL LACOMBE.

ADVOCATE IN FRANCE.

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DEDICATION.

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To the Right Honourable

The Speaker of the House of Commons.

Sir,

I cannot with Montesquieu assert that I have come to this great country—which at the present moment anticipates the discussion of all problems affecting the moral and material well-being of the nations most advanced in civilization—only "to think," but "to study."

I have striven to learn the opinions most esteemed and promulgated by the National Association for the Promotion of Social Science, by means of a competition, in which twenty-nine authors of Europe and America have taken part, for the solution of the problem embodied in the following terms:—

"*In what way ought an International Assembly to be constituted for the formation of a Code of Public International Law; and what ought to be the leading principles on which such a Code should be framed.*"

On account of the interest of the best works presented at the competition which emanated from the United States and France, countries united so closely with Great Britain, the first by the ties of kindred, and the other by near neighbourhood, I venture to hope you will give me leave to dedicate to you the two Memoirs to which the Social Science Association has allotted

the Premium, and my own more unworthy lines as an introduction to precede them, concerning the constitution of an International Assembly, the framing of an International Code, the right of declaring War, and the expediency of Arbitration.

It is the best form in which I am able to give expression to the sentiments of admiration and respect I feel towards the House of Representatives of this country that has acquired the greatest experience in the pacific path of reform, which has been the first to adopt the principle of International Arbitration, and has bequeathed to future history the moral and solemn example of a magnanimous submission to three decisions by arbitrators whose awards were pronounced in a sense adverse to her own national pretensions, at Geneva, at Berlin, and at Paris.

I have the honour to be, Sir,

Your most obedient Servant,

ARTURO DE MARCOARTU.

BRIGHTON, *January* 25, 1876.

INTERNATIONALISM.

BY

HIS EXCELLENCY

DON ARTURO DE MARCOARTU,

EX-DEPUTY TO THE CORTES.

SUMMARY.

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INTERNATIONALISM.

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I.

CODIFICATION OF THE LAW OF NATIONS.—INTERNATIONAL REPRESENTATIVE ASSEMBLY AND SUPREME INTERNATIONAL COURT.

"UNHAPPILY THERE IS NO INTERNATIONAL TRIBUNAL to which cases of this kind can be referred, and there is no INTERNATIONAL LAW by which parties can be required to refer cases of this kind. *If such tribunal existed it would be a great benefit to the civilized world.*"

(Speech of the Right Hon. Lord Stanley, M.P., Secretary of State for Foreign Affairs, now Earl Derby, on the "Mermaid" difficulty with Spain, 12th July, 1867.)

S'il est une idée qui soit destinée à'devenir la conquete de nôtre géneration, c'est bien cette idée qui gagne tous les esprits d'un TRIBUNAL INTERNATIONAL, Eh bien! voilá, *la premiere experience qui en est tentée.*"

(Speech of the Duc Decazes Minister of Foreign Affairs in France, in December, 1875, on Judicial Reform in Egypt.)

"We want a strong public opinion everywhere to be aroused, and to establish a sort of modern AMPHICTYONIC COUNCIL, *or at any rate, to take some steps further than those which have already been taken to approach a result so desirable.*"

(Speech of the Right Hon. Lord Aberdare, President of the National Association for the Promotion of Social Science at the distribution of International Law Prizes, 9th October, 1875.)

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THE physical law of universal attraction has a corresponding moral expression in the life of nations. Because this discovery had not yet been made, it was attempted in former times to establish by force accumulations of territories and states, whether under colonial rule, under the sceptre of emperors and kings, or under the republican system; but all alike were compulsory unions or expansions, which similar force has sufficed to dissever.

It was believed, and it is still the belief of the immense majority of the unreflecting classes, that the subject of a great state is happier than he who is born the subject of a small one, merely because the former is greater in extent, more numerous

in population, and more powerful in arms; and the sovereign chiefs of tribes, of nations, and political parties have, to their own private benefit, profited by this erroneous ideal of patriotic aggrandisement.

Hence it was that Rome and other nations of antiquity went on acquiring by conquest provinces and colonies, which afterwards one after another emancipated themselves from the paramount authority.

At a later period kingdoms and territories in Europe, which had been for centuries before at war with each other, became united, sometimes by the result of arms, and at others through the union of sovereign families.

The epochs are less distant which witnessed the ambitious political enterprises of Charlemagne, of the Emperor Charles V., of Henry IV., of Louis XIV., and Napoleon I. By peace or by war they sought to unite people by the unification of their laws, and upon most occasions by the instrumentality of formidable armies, causing the individual liberties and autonomy of the several states to succumb to the sceptre and sway of an emperor or a sovereign monarch.

The project of Henry IV. to form an European confederation of fifteen members,—that is to say, out of six hereditary monarchies, five elective monarchies, and four republics—one of the most highly eulogised designs of that age, was due, perhaps, more to the antagonism felt by Henry IV. to the House of Austria than to any other feeling.

After Napoleon I., and in opposition to him, in 1815, the Emperor Alexander of Russia, in conjunction with the Emperor of Austria and the King of Prussia, created the *Holy Alliance*, apparently for the purpose of maintaining peace; but the other Governments did not adhere to this alliance, since they regarded it as a coalition and power contrary to their liberties.

The subsequent idea of an European or International equilibrium to be maintained by the coalition against new conquests of several powers, gave rise to treaties, some of which are still in force.

Railways, steamers, and the telegraph have, in these later days, inaugurated a revolution in the international relations of the peoples, approximating them so greatly in order to draw closer their association and bind faster their mutual interests, that Economic Internationalism began to loosen the restraints of Customs and Barriers, and in some cases (in the Zollverein, for example), suppressed them altogether between certain states, even before the existence of Political Confederations.

In our own days we have witnessed another great evolution of Internationalism. From the thrones of emperors and kings, from the offices of ministers, from parliaments, the tribune, the press, and the professorial chair, was proclaimed the removal of the boundaries interposed by the policy of times gone by, between people of the same race, speaking the same language, holding the same faith, invoking the principle of *nationalities;* and between peoples, without mountain ranges to separate, rivers to divide, or deserts to isolate them from one another, by invoking the principle of *natural frontiers.* And some dynasties have fallen and others have been shaken, dreading this effect of the fraternal embrace of nationalities of the same race, for the locomotive has not run in vain from one extreme frontier to another amongst peoples derived from the same family of nations, preaching Scandinavism, Panslavism, Germanism, Italianism, and Iberianism.

Italianism was the political realization of the geographical expression of Italy, as the fusion of her states gave more liberties to all the elements out of which it was to be composed, it was aided by foreign blood, and it was the cause of the independence of the Italian people.

As I announced years since, the Zollverein, conceived by Prussia, prepared the present evolution of Germanism, which, during the siege of Paris, created the Confederation of Northern Germany under the hegemony of Prussia.

It is not difficult to recognise again the series of forms assumed by Internationalism during the course of ages. To conquests succeeded absorptions, unifications of monarchies,

federations and confederations of republics, such as that of the United States and the States of Helvetia, or like that of the German Empire (which is neither an unitarian or unified Empire), formed by Prussia, the kingdoms of Bavaria and Wurtemberg, and the Grand Duchies of Baden and Hesse.

It is feared that in these extensive agglomerations of race, ambitious projects may be discovered on the part of coalitions against other countries; for the external policy of the confederated powers continues the same, promoted by an influential and skilful diplomacy, and backed by formidable armies; and wars of races are predicted which, in the amount of bloodshed and ruin they would occasion, would far surpass the wars of ages past.

Many publicists express fervent wishes for the federation of peoples and the confederation of races, and forgetting how important it is to uphold the individual and collective autonomy of political associations, whether of municipalities or states, believe it possible to reduce to a common model, and in a few short years, the institutions of every civilised nation.

Instead of dreaming of republican federations amongst European peoples, it would be better to endeavour to raise the standard of the individual, approximating him more and more to the level of his rulers, making of each man a semi-king, and in lieu of attempting at the outset an universal unification or confederation, the kind of internationalistic evolution it would be most prudent to prepare, is the concord of bordering or distant nations of the same or different races, in order to their conforming their relations to an international code of morality and justice, leaving the whole of the states independent, free, and autonomous, in everything which does not invade the independence, liberty, and self-governing laws of the other states.

This is the Internationalism most adapted at the present day for the interests of monarchs and civilised nations, and which, by degrees, would drive war farther and farther away; and it is the most practicable kind of Internationalism, for if it has proved possible for confederated peoples and races of different origin to

live under an imperial rule in Austria, and under republican institutions in Switzerland, it does not appear that it would be more difficult to bring into harmony the existence and interests of distinct races in different states.

And when the consciences of kings and nations feel distressed at perusing the sad chapters of history which treat of the scenes of bloodshed, spoliation, crimes, wars, pestilences, misery, mendicity, ruin, and slaughter of past ages; and when the light of intellect, daily increasing in intensity and brilliancy, shall in future days illuminate the human understanding, and impress the individual with the knowledge that his felicity does not depend upon his living in a great state, which loads him with heavy taxes to support war, and is swamped with soldiers and swarming with paupers; when he shall learn that the Swiss or Andorrian, the Belgian or the Hollander, may be far happier than the Englishman or the Frenchman, the Spaniard or the Italian, the German or the Russian, than the North American or the Chinese; when, instead of exciting the blind vanity or headstrong passions of the popular masses by suggesting as a motive the aggrandisement or decay of Spain or of France, an appeal can be made to the individual reason concerning the well-being or infelicity, the prosperity or adversity of Spaniards or Frenchmen; the law of universal attraction for modern Internationalism will be exhibited in the intelligence, the freedom, and the wealth of the peoples. That race and people which shall exhibit the highest culture, the utmost freedom, and the greatest wealth, will become a central sun of civilisation to other nations, and the other states will feel its attraction in proportion to their moral capacity, their mutual liberties, and to their intercommunication; the factors which, in conjunction with productiveness, constitute the riches and happiness both of individuals and of nations.

Time and the education of all classes will assuredly transform this moral and preceptive law into a law both real and positive; but in order to attain this end the intellectual classes, whose influence is chiefly felt in the government of states, must effect a reform in the international regimen which governs Peace and War.

To-day each state has, in its own constitution, embraced a different view of the questions of definition of naturalisation and nationality, and a host of similar topics relating to nationality, naturalisation, and allegiance have been continually springing up between the United States and England, France, Austria, and Prussia; between Spain and her former colonies; and between Switzerland and the North German Confederation. The rights of property are determined by each country according to its own special criterium. Legal administration confers certain specific civil rights upon natives and others which are distinct upon aliens. Commerce, which claims the whole universe for her birthplace during her incessant travellings from one frontier to another, is continually diversifying her code. The questions of asylum, of crimes, and of extradition are being interpreted in different senses by different governments. In warfare, belligerents or neutrals, armistices, prize and prisoners, articles of war and contraband of war, are terms which have not at all times and in every quarter the like signification. Hence the source of a multiplicity of questions of competency, and hence the origin of interminable demands and contravening claims which grow up between different states, and either furnish pretexts for immediate acrimony and strife, or else are sufficient, if allowed to stand over, to hold in continual jeopardy the tranquillity of nations.

The permanent period of the life of nations is peace, the abnormal period war, and the intermediate or transitory period between these two is that of contests, disputes, and rival claims. Hence it follows that an international code should comprehend the laws appropriate to each of these three states– viz., laws for the time of peace; laws to serve in time of war; and laws transitory, for that of contentious and conflicting interests.

I am of opinion that two simultaneous proceedings might and ought to be followed for regulating the internationalism or codifying the relations between states. One of these, more immediate in its results, will be the codification of those principles which are already more or less recognised, taking for

guides and starting points the collections of international conventions, the standard works of the best authorities who have written on the subject of treaties, and the solutions pronounced in special cases; whilst the several principles and controvertible cases could be discussed and cleared up amongst the states themselves. The other process is the scientific preparation of the bases of the Code of Nations by subjecting them to the test of experience.

In the first of these two proceedings, affording more immediately practical results, the shapeless constituted right will become moulded to the form of right rational; and in the second the right constituent will be modified according to the counsels of observation and the history of nations.

The first codification will constitute a series of special conventions, which, as soon as they are ratified, can at once be applied in peace, in war, and on the occurrence of any international contest.

The second work will lay the foundation of the future international charter of the nations.

It might be said that in this primary codification the system of the English school would be followed which is continually and gradually shaping the constitution of the country by successive legislative reforms; while the system of the Latin school, too much attached perhaps to the scientific form of its codes, would find its opportunity at a later period.

The codification of the constituted law and the project for a constituent code, ought to be effected by one and the same International Assembly, comprehending within its centre the learning and experience of the states of the civilised world.

The idea of an International Congress and Tribunal appears to have had its origin in the Amphictyonic and Achaian leagues, and in the Lycian confederacy, corporations which are described to us as congresses and tribunals, because they afforded help to the confederated states by the exercise of the power and justice they wielded. In the present day it is indispensable to separate the legislative element, from which

the laws emanate, from the judicial element, which enforces justice by code or by precedent.

It is now half a century since the initiation in November, 1825, of the preliminary negotiations for the convoking of the International Congress of Panama, inaugurated on the 22nd June, 1860.

Representatives or agents were appointed at this Congress by Great Britain, France, and the Netherlands amongst European nations, and by the United States, Peru, Mexico, Central America, Columbia, Brazil, and Chili amongst the American States; but the only states which were actually represented at the congress were Mexico, Peru, Central America, and Columbia. The season, the climate, and the geographical situation of Panama were not, fifty years ago, the most fitting for the residence of an International Congress, and the feeble authority which the new Columbian Government could be expected to exert amongst the other European and American Governments promised no greater result than a mere passing mention of the Congress when tracing the history of International Assemblies.

In the programme of the Congress proposed by the Columbian Government it was attempted to lay down principles of the highest importance in the code of nations; but the truth is that the scheme of a treaty of alliance offensive and defensive against Spain had a large share in the ideas of the Hispano-American States; and such a project contributed in no small degree in those days to prevent the European and the United States (whose President at that time was Adams) cooperating thoroughly in the successful result of the Congress.

A new meeting was called to assemble at Tacubaya, near Mexico, on the 15th July, 1826, but as only two or three delegates made their appearance no Congress was formed.

About this time twelve years, on the 4th November, 1863, the Emperor of the French addressed a communication to all the sovereigns of Europe, proposing "to regulate the present and to secure the future" in an European Congress.

It was apprehended by some that attempts would be made

at this Congress to originate great disturbances in the frontiers of European states, and that if not preceded by a disarmament, the Congress would hasten war. Perhaps under the influence of such fears, Lord John Russell, in his reply to the French Government, dated the 25th of the same month, was the first to decline accepting the invitation of the Emperor.

At the Congress held at Panama, in that attempted by Napoleon III., and in all the projects of International Assemblies, Congresses, Parliaments, Senates, or Diets, which I have seen, it has been sought to constitute these supreme legislative bodies out of the representatives of the executive powers only, without allowing any representation to other political powers of the state, and without the least taking into account, either directly or indirectly, the constitutional representative system.

My own idea is that in a Constituent Assembly, to which is committed the lofty mission of *agreeing* to a new code of nations, and the constitution for the future of one or two International Chambers, the executive, legislative, and judicial elements of each nation ought to be duly represented. The first of these would express the action and experience of each government; the second would represent the political opinions of the majority and the minority of the legislative bodies, and, in an indirect manner, the public opinions of the respective countries; and the third would express the degree of science attained in their courts and universities.

Each nation would send a *Delegate* or ambassador appointed by the government; two *Electors* of the international parliament, chosen by the two chambers of the nation, and who should be, or have been, members of the said chambers, and belonging one to the majority and the other to the minority of the same; and a *Magistrate* nominated by the supreme tribunal and the universities of the nation.

The four representatives of each state would have an equal vote, and the International Assembly would elect its president with a casting vote in case of equality.

The International Assembly or Parliament, besides codifying

the constituted rights and establishing in a Magna Charta the constituent rights of nations, in peace, in war, and in cases of dispute, would at once endeavour to promote the consolidation of peace and a harmonious internationalism amongst all states, so as to advance the culture and prosperity of the people, augmenting the frequency and intimacy of their mutual and reciprocal relations. But this supreme international legislative power would always keep itself separate and alien from the internal government of the several states, which would remain in the full enjoyment of their respective autonomy and political rule, more or less liberal, more or less restrictive, autocratic, monarchical absolute or limited, or republican; thus following the counsel of the immortal Washington, who, eighty years ago, on the 17th December, 1796, in his "Farewell" to the American people, recommended them strictly to abstain from mixing themselves up with, or intermeddling in, the affairs of other nations.

This régime of a future Internationalism demands a judicial power which shall apply and enforce the legislation of the International Assembly; a power which might be commended to a High and Supreme International Court, composed of special tribunals, to be elected by that legislative body, in conformity with certain conditions as to the qualifications to be possessed by the magistrates so appointed.

While Governments hesitate to decide upon systematically promoting the codification of a constituted, and the founding of a constituent, right, and upon commending this arduous mission to an International Assembly composed of members of acknowledged authority in matters of diplomacy, policy, and jurisprudence, public opinion, in the meantime, proclaiming the necessity of a positive International Law, has commenced bringing together certain materials more or less incomplete, more or less shaped out, more or less practicable, fitted to stimulate the initiative of the Executive Powers. During these last years, and especially since the Franco-German war, the National Association for the Promotion of Social Science, the Association for the Reform and Codification of Law of

Nations, the International Institute of Ghent; many other institutions, academies, and corporations in France, Italy, Germany, and America; the numerous special publications which have issued in the shape of volumes, reviews, and journals, and the public meetings which have been held in both hemispheres, are daily more and more attracting the attention of men at the head of public affairs to the international question.

If Russia, after granting freedom to her millions of serfs, has set forth the necessity of reforming the usages and customs of war—if Germany, which propounds a permanent peace—if Austria and Italy, whose well-being is so identified with the maintenance of the peace of Europe—if France, where the voices of illustrious men, taught by the reverses which their country has suffered, recommend peace, industry, and liberty as the best way of avenging the late war—if Great Britain, which lives by peace, and for the peace of all countries —if the United States, at the centenary of their independence, are not inspired by the pacific spirit of Washington and do not promote the constitution of an International Assembly —yet is it not totally impossible that other independent states, such as Swede and Norwegian, Denmark, Holland, Belgium, Switzerland, Spain, Portugal, Brazil, and the other American States may attempt, in more advanced days and under more favourable conditions, to second the initiative which was boldly assumed fifty years ago at Panama by the young and inexperienced Government of Columbia.

And it is not unlikely that, should any great length of time elapse without any of the European or American Powers manifesting their desire and intention to promote the constitution of an International Congress, an attempt might be made to essay, as preliminaries thereto, a series of Parliamentary Conferences amongst public men actually representatives or ex-representatives in national parliaments.

There already exists a more than tacit assent to this idea in the minds of various Belgian, Italian, English, Swiss, German,

Dutch, and American representatives; and no doubt can be entertained that not only the four hundred or more representatives who have voted in favour of arbitration in England, Italy, Sweden, Holland, Belgium, and America, but many more, both in those and other countries, are now agreed as to the necessity of inaugurating the laying down of a Code of International Laws.

Let us hope that before many years an International Parliament will be constituted, to draw up such laws as ought to rule relations between nations estranged from each other, as the parliaments of confederation fix the reciprocal relations between the nations so confederated; and as National Parliaments, Congresses, Cortes, Assemblies, Reichstag, and the Bund establish relations between municipalities, provinces, counties, and departments. No doubt can be entertained that by means of the education of the people, which moralises and enriches them, by the development of facilities of communication, and doing away with the trammels which oppose the free circulation of thought and material products, war will eventually become more and more difficult.

The Parliamentary Conferences, and in due time the International Parliament, would have to promote the education of all classes in every country of the world, to their gain in culture and morality, and to the benefit of international interests; they would have to establish, as the only legal one to be used, an equal standard of weights, measures, and moneys; they would have to reduce to the lowest possible cost the post office and telegraphic services, they would have to prepare a universal freedom of transit without passports, customs, port, or differential flag dues; continually reducing the frontier tariffs and establishing customs, unions, or zollvereins (for at present some states only retain custom duties for war purposes), and should endeavour to hasten the unification of the civil and mercantile code of nations so that in every country each man's industry and property may give him equal rights.

An International Association of Chambers of Commerce, to be

appointed by delegation from these Chambers, whose influence is at present restricted in great measure to the nation where they are established, international clearing banks, and undertakings which shall combine with reciprocal advantages the interests of distinct nations, are, without doubt, destined hereafter to favour the interests and strengthen the cause of a permanent peace.

II.

RIGHT OF DECLARING WAR.

"WE WANT TO AROUSE A STRONG FEELING OF REBELLION AGAINST THIS TYRANNY OF WARFARE. We want to arouse good citizens of every country to protest against these enormous masses of the people being kept in arms for each others' destruction." (Cheers.)

(Speech of the Right Hon. Lord Aberdare, President of the National Association for the Promotion of Social Science, at the Distribution of International Law Prizes, 9th October, 1875.)

"IT IS NOT EXACTLY IN ACCORDANCE WITH OUR NOTION OF FREEDOM AND PEACE that there should be on the Continent hardly any man of military age who is not likely to be taken at short notice from his business and his home, and sent to fight at a distance from his own country, because HIS GOVERNMENT AND SOME OTHER GOVERNMENTS HAVE GOT INTO A QUARREL, OF THE MERITS OF WHICH HE IS IN ALL PROBABILITY PROFOUNDLY IGNORANT. (Cheers.) *That is not precisely an ideal condition of civilization.*"

(Speech of the Right Hon. Earl Derby, Secretary of State for Foreign Affairs, the 18th December, 1875, at Edinburgh.)

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IN studying the perturbations of peace it is necessary not only to discover and realise the causes which lead to war, with the object of diminishing them, but the powers which dictate wars in order to counteract and neutralize them. It is necessary, in short, to investigate in whose hand the right of declaring war ought to be vested.

There exists in all monarchies, both in those which are absolute as well as in those controlled by popular representation, a right constituted in opposition to the right legitimate, rational, and innate of the individual; viz., the right of war.

It can be conceived how, in past times, when subjects were vassals, a sovereign might dispose of their lives and fortunes, but it is not to be explained how, at the present day, the head of a state, who cannot dispose of the property of his subjects except by the consent of their own representatives in the legislative council, should still retain the prerogative of disposing of the lives of his subjects and of declaring war.

It is useless to attempt to explain this contradiction by saying that, inasmuch as war cannot be carried on without resources, and as these must necessarily be voted by the legislative body,

so, although the chief of the state declares war, yet it is always the legislative assembly which sanctions it or renders it impracticable.

It would be difficult to find, in the history of modern nations, any instance in which, war having been declared by the monarch, a government possessing a legal if not a legitimate majority in the representative chambers has not obtained from them the necessary resources for undertaking it.

On the contrary, history has recorded many occasions on which the heads of the state, and even the heads of the political party holding the reins of power, in order to quiet the struggles of parties and weaken the opposition, have availed themselves of the most favourable opportunity, have sought earnestly at times even a ridiculous pretext, nay, have even provoked an occasion for the purpose of concentrating the passions of the people upon matters external, intoxicating them with the successes of a war engaged with some weaker state, where it was asserted the national honour imperiously demanded reparation, or else that a providential mission had to be accomplished by extending the benefits of modern civilisation to distant regions by the agency of artillery. And in these solemn votings of the legislative assemblies, when the popularity, or, perhaps, the fate of a dynasty, or the existence of a party in the government of the state were believed to be at stake, parliamentary majorities have been found to vote the supplies with blind enthusiasm, and to deliver up the future prospects of their country to the chances of war.

I remember, with bitter regret, how one well known public man who had been affiliated to Peace Congresses, and who had made his voice heard in the cause of arbitration in his own country and abroad, failed as a legislator to oppose the vote for a war budget or estimate.

We thus see that the autonomy of the individual and the national sovereignty do not exhibit themselves or exist in international questions. Monarchical and republican nations which govern themselves within their own frontiers abdicate

their natural rights and hand themselves over to the disposal of their governments as regards their exterior affairs. That representative system which operates in the national organism vanishes completely in the sphere of internationality; that representative system, which more or less broadly, more or less perfectly, directly or indirectly, prevails in questions municipal, provincial, or departmental, affecting the nation; *is not to be found existing in any country for the settlement of international conflicts*; and the chief of the state is alone left the arbiter, whether to declare for war or to adjust the terms of peace.

On various occasions I have pointed out the supreme importance of upholding the right of peace and war on behalf of the sovereignty of the people in the constitutions of nations.

It has been recently counselled by M. de Lavelaye that constitutions should reserve to the legislative assemblies the right of declaring war and making peace. In countries so singularly favoured as England, where political opinion, besides being enlightened and well informed, is so influential, such a prerogative of the parliament would be of immense importance; but where the legislative assemblies do not possess the independence of the British Parliament, the votings in favour of a declaration of war would afford room for similar intrigues to those now employed by governments which seek to obtain the approval of their estimates.

It is pertinent to state now, that that inalienable and imprescriptible right of the citizens of a nation—the right of war—was proclaimed by the French charters in the last century.

The French National Assembly decided on the 22nd May, 1790, as follows:—

"War shall not be decided upon except by a decree from the Legislative Body, which will be granted upon the formal and requisite petition from the King, and which will subsequently be sanctioned by His Majesty."

The Convention, by the Constitution of the year II., expressly conceded to the people the right *of declaring war by means of a "plebiscitum."*

According to the Constitution of the year III., at the time of the Directorship, war could not be decided on except by a decree from the Legislative Body, and on the formal and requisite petition of the Executive Directorship. The treaties of peace, of alliance, of neutrality, of commerce, and other international treaties, were not valid until after having been examined and ratified by the Legislative Body.

The Constitution of the 22nd January, year VIII., stated:—

"The declaration of war and the treaties of peace, of alliance, and of commerce, shall be *proposed, discussed, decreed,* and *promulgated as laws.*"

In the United States war must be declared by Congress. The Constitution of the North American Confederation says:—

"The Congress shall have power:

. . . . . .

. . . . . .

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

The Attribution of Public Powers Bill voted lately by the French Assembly, says:

"The President cannot declare war without the previous consent of the two chambers."

M. Laboulaye in his report commented upon this clause as follows:

"We do not think that objections can be made to this clause. Without doubt the head of the state, who, according to Clause 3 of the Constitution, disposes of the armed force, has the right and ought to take all measures required by circumstances not to let France be surprised by an invasion. This right is now more necessary than ever. We do not wish to weaken a prerogative which protects the independence and very existence of the country. What we demand is that France shall remain mistress of her own destiny—that is, that war shall neither be undertaken nor declared without her consent. There is no need in this assembly of insisting in the utility of such a precaution."

Public opinion, the support of which is sought for every right cause, while often silent, is always inert, and makes itself heard but slowly, while at present it has no voice or suffrage, nor does it enjoy the right to pronounce for peace or war, having abdicated in every country its individual autonomy on behalf of the head of the state.

The opinion of the French people was adverse to the late Franco-German war; and notwithstanding the streets of Paris were traversed by groups, perhaps purposely suborned, crying, "War! war!—To Berlin! to Berlin!" just as if it were merely a matter of taking a railway ticket at the Strasburg Station and getting set down at the capital of Northern Germany. The cries of some thousands of men were heard, and war papers were circulated with profusion which spoke in favour of war, but the feeling of millions of Frenchmen who protested against the sanguinary struggle which impended was never made known. The former may have been the opinion made public, but it was certainly not the general opinion of the people, whose wishes were never made known.

At this crisis, as in many other instances recorded by history in the annals of nations, it was observed, that the clamour of a hundred rash men receives more consideration, and exercises greater influence, than the prudent silence of millions.

From a collection of reports received from the Prefects of France, which were found in the cabinet of the late Emperor, it appears that the immense majority of the French people were desirous of peace.

Bismarck declared on the 8th July, 1870, that the majority of the French nation desired peace, and had need of peace.

The Emperor of Germany, then King William, addressed the Reichstag in the same terms, and this Assembly replied that the war had been decided upon by a fraction only of the French people.

Prince Frederick Charles, when entering the French territory, in an order of the day addressed to his army from Hombourg, on the 6th August, 1870, used the following words:

"Without any reason the Emperor Napoleon has declared war against Germany, and his army is our enemy. *The French people have not been consulted on the subject of his intention to wage a sanguinary war against the Germans*, his neighbours; consequently you have no motive to become their enemies."

M. Favre, being Minister for Foreign Affairs of France, when addressing his note to the European powers, said that

not a person in Europe could seriously believe that the French people were in favour of the war. The following are his words :—

"It is true that the majority of the legislative body cheered the warlike declarations of the Duke de Grammont; but a few weeks previously it had also cheered the pacific declarations of M. Olivier. A majority, emanating from personal power, believed itself obliged to follow docilely, and voted trustingly; but there is not a sincere person in Europe who could affirm that France, freely consulted, made war against Prussia."

In the face of these facts, we must conclude that the last war broke out against the desire of the French people, through the defects of their representative system, and through the unrestricted power conferred on the heads of nations—even in representative monarchies—to dictate war without expressly consulting, by a "plebiscitum," the very people they are sending to death, intoxicating them with ideas of sanguinary reprisals, groundless invasions, fantastic victories, and unjust appropriations of territory, which cause men to forget all moral sentiment and all notions of justice.

And from this we must infer that if the French constitution had contained an article exacting a plebiscite before declaring war, one month after its being proposed by the Imperial Government, and if in the middle of July, when that government was seeking all sorts of groundless motives for declaring war, the will of the French nation had been consulted by means of a plebiscite, it is probable that the interests of France and Germany, of Europe and of America, would have caused light to be thrown upon the question, would have brought out in relief the mad and unheard of attempt of the French Government, and millions of "noes" would have pronounced a censure upon its rulers.

Nothing more iniquitous can be imagined than to see the instigators of war in the Press, the Tribune, and the Parliament holding themselves aloof from, and keeping out of the range of, war's missiles, and leaving the unhappy people who yearn for peace to face the cannon's mouth; nor yet can anything be conceived more contrary to the representative system than to witness a bellicose minority impose its will upon a pacific majority.

In this age of the emancipation of the races it is inconceivable how, while we free the African from slave labour during peace, the most civilised nations should continue to be the slaves of the heads of states, who, whether in autocratic or representative monarchies, dispose solely of the lives of their subjects in time of war.

The power to declare war ought to be again deposited in the hands of the people, to be exercised by means of a plebiscite, and neither the head of the state or society possess any just right to compel a population to fight who may refuse voluntarily to offer their lives for that purpose.

If universal suffrage is at any time justifiable, if a duty of conscience ever imposes it as a duty to listen to the *vox populi*, it is assuredly when the nation is called upon to declare war; and a yet greater right to pronounce freely their will should be exercised by those countries where the military service is compulsory. For a few men there to declare for war, who perhaps share neither in its costs or sufferings, without consulting *en plebiscite* the adult inhabitants, is equivalent to disposing of the lives of these men without their will, perhaps contrary to it; it is to hold in slavery and prepare for slaughter civilized and independent nations, after the slavery of Africans has been abolished.

Only let men once understand that they alone possess the plenary right to dispose of their existence; let this natural, although forgotten, right be once introduced into the constitutions of the nations—insist that a plebiscite shall invariably and indispensably precede a declaration of war—and you will at once render these disgraces to humanity less frequent and more difficult.

With the desire of avoiding the commotions which would arise from the taking of plebiscites—commotions, at the same time, infinitely less than those of the conflicts which they would obviate—it might be made a condition that the plebiscite should only be had recourse to when the Chambers declare war against a minority of a tenth or more of the voters. In such cases, one

month after the promulgation of such a vote, the declaration of war should be submitted to a plebiscite to obtain the vote or veto of the people direct from the people.

The existence of nations imperiously calls for this reform in constitutional charters, no less than for the establishment of arbitration, in order that when the latter course of judicial procedure between nations shall be refused, the national will may be ascertained in the manner most genuine and impressive.

III.

INTERNATIONAL ARBITRATION.

"By the Treaty of Washington, modes of settlement have been fixed for several questions which had long remained in dispute. The President has concurred with me in the application of that principle of amicable reference which was proclaimed by the Treaty of Paris (1856), and which *I rejoice to have had an opportunity of recommending by example.*"

(Her British Majesty's Speech in August 21, 1871.)

"The year has been eventful in witnessing two nations which speak the same language, adopting a peaceful arbitration for the settlement of disputes of long standing, and which were liable at one time to cause conflict. An example has thus been set which, if successful in its issue, may *be followed by other civilized nations, and possibly be the means of restoring to productive industry the millions of men now engaged in military and naval employment.*"

(Message of the President of the United States of America, in December, 1871.)

"One word I must venture to say on the subject of the Treaty of Washington. It is true that that treaty has all the importance which attaches to any instrument that aims by sure means at bringing to a friendly termination a conflict of opinion between two great Powers; and that is a title which would well render it deserving of praise. But that is not all. That treaty ought to be regarded in two other respects, in order that we may thoroughly appreciate both the motives and the acts of those who are parties to it. That treaty not only aimed at putting an end to a controversy that existed—it aimed at obviating the recurrence of such controversies in future by extending and improving that code of international law which is among the most remarkable of all the tokens and the triumphs of modern civilization, and upon the sound and legitimate action of which it is that we are to rely in no small degree for the future peace of the world. (Loud cheers.) But there was another point yet more important, and that was this,—the Lord Chancellor has spoken to you with truth and force of the miseries of war; but differences will occur, quarrels will arise; honour—not merely visionary sentiments of honour, but sound principles of honour—will forbid the absolute surrender of the points for which the contest is waged; how are these contests to be settled? "By blood," has been the unfortunate reply almost invariably in former times. A great experiment is now being tried: it may be no more than an experiment. The vision may be too bright and too happy to be capable of being realised in this wayward and chequered world in which we live; but it is an experiment worth the trial at any rate, whether it is possible to bring the conflicts of opinion between nations to the adjudication of a tribunal of reason instead of to the bloody arbitrament of arms." (Loud cheers.)

(Speech of the Right Hon. W. E. Gladstone, M.P., Prime Minister, at the Lord Mayor's Banquet, November 9, 1871.)

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THE system of International Arbitration has been practised from a very remote period, and it would be useful to draw up a brief historic analysis of the various forms in which it has been recorded, and the occasions upon which it has been employed, or attempted to be enforced, in order to study that course of opinion on the subject which has been successively adopted through past ages down to our own days.

It is before all things important to distinguish between arbitration *à posteriori*, or brought into action after differences

between nations shall have actually arisen; and arbitration *à priori*, or stipulated beforehand in order to meet difficulties and contests which at any future period may be likely to occur.

Some publicists attribute the primitive idea of International Arbitration to Amphictyon, King of Athens, who founded, in the year 1497 B.C., the Amphictyonic Council, or Supreme Senate, wherein the Confederate States or Cities of Greece (which were twelve at the commencement, and afterwards amounted to thirty-one) enjoyed an equality of representation. Herein were decided the public differences and disputes which arose between the cities of Ancient Greece for the space of fifteen centuries.

In the Middle Ages the Popes, on more than one occasion, became the arbitrators between Sovereign Powers.

In subsequent times, the exercise of arbitration has been committed to Monarchs and the Chiefs of Republican States.

The first Agreement by means of International Arbitration entered into in this country appears to have been that of Westminster, in 1655, between England and France, who submitted their differences for decision to the Republic of Hamburg. Article 24 of that Treaty says:—

"That three commissioners be named by each power to decide the damages suffered by both since 1640, and that any points on which they may not agree be remitted to the decision of the Republic of Hamburg, which should nominate commissioners whose judgment would be binding on the parties."

But in all the innumerable cases submitted to arbitration in our own days, if we except those frequently occurring in the interior of the North American Republic between the States constituting it, arbitration has been appealed to only after the motive of the dispute had already arisen, and, in fact, arbitration has herein been, as in the case of the Alabama claims, *à posteriori*, or, if we may so term it, of a *repressive* nature.

The arbitrative powers exercised by the Amphictyonic Senate, and by the Achaian, Lycian, and Hanseatic Leagues; the arbitration proposed in the great design of Henry IV., in 1601; in the Essay on the Present and Future Peace, of William

Penn, in 1693; and in the "Projet de Paix perpetuelle," of Saint Pierre, in 1743; were alike arbitrations *à priori,—preventive,* or anterior to the conflict.

It cannot admit of doubt that an arbitration, when practicable, must prove all the more advantageous if a proper compact be previously entered into, during the existence of peace and amity, between those nations which wisely prefer to submit their differences to the tribunal of reason rather than to the risk of arms.

The agitation in favour of these recent compacts for consolidating the peace of nations sprung up in the great American Republic. In February, 1832, the Senate of Massachusetts adopted, by 19 votes against 5, the following resolutions:

"Resolved—That in the opinion of this Legislature some mode should be established for the amicable and final adjustment of all international disputes, instead of to resort to war.

Resolved—That the Governor of this Commonwealth be requested to communicate a copy of the above report and of the resolution annexed, to the Executive of each of the States, to be laid before the legislature thereof, inviting a co-operation for the advancement of the object in view."

In 1837, a joint committee of the Senate and House of Representatives of Massachusetts, carried resolutions identical in character, recommending the Executive of the United States to enter into negotiations with such other Governments as, in its wisdom, it may deem proper, with a view to effect so important an arrangement. These resolutions were adopted unanimously in the House of Representatives, and by 35 votes to 5 in the Senate.

Cobden, whose voice was always raised in the cause of humanity, was the initiator on this side of the Atlantic, of the internationalistic sentiment, originated by the American people, by submitting to the House of Commons, on the 12th June, 1849, the following proposal:—

"That an humble address be presented to Her Majesty, praying that she will be graciously pleased to direct her principal Secretary for Foreign Affairs to enter into communication with foreign powers, inviting them to concur in treaties binding the respective parties, in the event of any future misunderstanding which cannot be arranged by amicable negotiations, to refer the matter in dispute to the decision of arbitrators."

The Palmerston Cabinet, however, opposed this proposition, and the House rejected it by 176 votes to 79.

Two years afterwards, in 1851, Mr. Foote, of the United States, Chairman of the Senate Committee on Foreign Relations, affirmed that arbitration, as a system, was perfectly reasonable, and in the unanimous report of the Committee, it was added:—

"That it would be proper and desirable for the Government of these United States, whenever practicable, to secure, in its treaties with other nations, a provision for referring to the decision of umpires all misunderstandings that cannot be satisfactorily adjusted by amicable negotiation, in the first instance, before a resort to hostilities shall be had."

In February, 1853, the United States' Senate Committee on Foreign Affairs adopted the following resolution:—

"Resolved, that the Senate advise the President to secure, whenever it may be practicable, a stipulation in all treaties hereafter entered into with other nations, providing for the adjustment of any misunderstanding or controversy which may arise between the contracting parties, by referring the same to the decision of disinterested and impartial arbitrators, to be mutually chosen."

On the 5th June, 1854, a Treaty, entered into by England with the United States of America, for the purpose of laying down the limits of the fishing grounds belonging exclusively to British fishermen and those of the United States, establishes the principle of arbitration in the following terms:—

"The Commissioners shall name some third person to act as an arbitrator or umpire in any case or cases on which they may themselves differ in opinion.

"The high contracting parties hereby solemnly engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive, in each case decided upon by them or him respectively."

The horrors of the Crimean War produced so deep an impression throughout Europe, that the representatives at the Congress assembled to negotiate the Peace of Paris, which followed, were recommended by their Governments, for the first time, to stipulate, that an attempt at mediation should in all future differences be made before an appeal to arms.

The treaty of the 30th March, 1856, often cited, although

perhaps not yet thoroughly examined before the bar of public opinion, opens by declaring in its 1st Article that "there shall be peace in perpetuity between the Signing Powers" in these terms:—

"From the day of the exchange of the ratifications of the present treaty there shall be peace and friendship between the Queen of Great Britain and Ireland, the Emperor of the French, the King of Sardinia, and the Sultan on the one part, and the Emperor of Russia on the other part, as well as between their heirs and successors, their respective dominions and subjects, in perpetuity."

Article 8 of the Treaty is as follows:—

"If there should arise between the Sublime Porte and one or more of the other signing Powers any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte and each of such Powers, before having recourse to the use of force, shall afford the other contracting parties the opportunity of preventing such extremity by means of their mediation."

In this Article an express obligation is contracted between the Sublime Porte and any one or more of the contracting Powers to submit their differences to the mediation of the other covenanting Powers, before having recourse to arms.

The Congress of Paris made a further step in advance; and, although this was not the subject of the conferences, extended the application of Article 8 in the protocol of the 14th April, 1856, whereby, following the initiative of the Earl of Clarendon, a friendly mediation was recommended in the case of those States between which differences might arise, prior to having resort to hostilities, in these words:—

"The Plenipotentiaries do not hesitate to express, in the name of their Governments, the wish that states, between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power."

No phrases can better exhibit the impulse which was given to the principle of arbitration which had been virtually stipulated at Paris, not by the wording of the Protocol, but by the spirit then predominating in the minds of the public men of Europe, than the following words, pronounced by Mr. Gladstone in the House of Commons:—

"As to the proposal to submit international differences to arbitration, I think that it is in itself a very great triumph. It is, perhaps, the first time

that the representatives of the principal nations of Europe have given an emphatic utterance to sentiments which contain at least a qualified disapproval of a resort to war, and asserted the supremacy of reason, of justice, of humanity, and religion."

It is possible that general attention has not been sufficiently drawn to a very important historic consequence of this Treaty.

The 11th Article is expressed as follows:—

"The Black Sea is neutralised: its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the Powers possessing its coasts, or of any other Power, with the exceptions mentioned in Articles 14 and 19 of the present treaty."

Now, in 1870, Prince Gortschakoff exclaimed against this Article in language which Lord Granville acknowledged to be both courteous and friendly. Prussia thereupon proposed a Conference, which was held accordingly at London, and the result was that the Black Sea, instead of continuing neutral, was liberated from the restrictions which had been imposed in 1856.

The contracting parties modified very essentially the Treaty of Paris, but in so doing fulfilled the compromises which they had contracted under the Protocol of 14th April, 1856, thus bequeathing a precedent of paramount authority for guidance in the future.

It may be alleged that the Treaty of 1856 in reality possesses no legal force in constitutional countries, because, where such a requisite is deemed necessary to constitute legality, it has not been submitted to the Representative Chambers for their approval. It has been also asserted that the Declaration of Paris is a treaty which has never obtained ratification. But on neither of these accounts does it cease to be one of the most authoritative and influential of conventions, which has received the adherence of no less than thirty-six Governments; and is in itself a worthy object of study in relation to the codification of the rights of nations.

During the conflict produced by the war which broke out between France and Germany the spirit of the treaty was morally outraged. The Government which declared war was

the first party to offend; and we have yet to learn whether the whole of the remaining Powers exerted themselves to the extent of their ability in the endeavour to maintain the peace of Europe, instead of standing inactively by without responding to the cry raised by the humane spirit of the age, while the contending states were furnishing a spectacle of the horrors of war to present and future ages.

This lamentable epoch of our own day teaches us that if we would inaugurate an era of arbitration *à priori*, something more is to be set down than mere aspirations;—an ineffaceable obligation that the contending parties shall, when the time arrives, have recourse to an arbitral decision, ought to be expressly imposed, so as to meet those cases in regard to which the arbitrative principle shall have been previously agreed to; and space be given to consider whether it would not be advisable, when the contending parties shall fail themselves to appeal to it, to decide the quarrel *in contumaciam*, or to emit a public declaration, if not of the sentence of arbitration, at least of the infringement of the Concordat of Arbitration committed by the rebellious party.

Public opinion will withhold its sympathy from that country which, after entering into a compact of this nature, shall afterwards declare war or refuse to abide by the proper arbitral decision; and will know how to distinguish between moral and immoral Governments;—between civilized states which obey the dictates of reason, and those which obstruct the progress of civilization.

The late Sir John Bowring introduced the principle of arbitration into the treaties negotiated by him with Belgium, Italy, Switzerland, Spain, Sweden, Norway and Hanover.

In 1870 Spain inserted a clause respecting arbitration in her Treaty of Amity and Commerce with the Republic of Uruguay.

If to Lord Clarendon belongs the honour of initiating the first Concordat of Mediation between the Great Powers of Europe, to Mr. Richard, also an Englishman, and who has devoted twenty-five years of an active life to promoting the triumph of peace, has been reserved the signal glory of obtaining the first Parlia-

mentary declaration in favour of arbitration, a distinction which even Cobden, with all his powers, failed to obtain.

On the 8th July, 1873, Mr. Richard submitted the following motion to the House of Commons :—

"That an humble address be presented to her Majesty, praying that she will be graciously pleased to instruct her principal Secretary of State for Foreign Affairs to enter into communication with foreign Powers with a view to the further improvement of international law, and the establishment of a general and permanent system of international arbitration."

Mr. Gladstone, at that time Prime Minister, and who, in his lengthened and exemplary career, has demonstrated that he is no less earnest in promoting the cause of peace than the most fervent of her apostles, feared, lest the amplitude of Mr. Richard's motion might prove rather prejudicial to, than likely to advance the triumph of, a scheme of pacific procedure in international questions ; but the Parliament pronounced in favour of the proposition by 98 votes to 88.

Initiated in the British Parliament, the favourable tide, let us hope, will go on widening in its influence until it is felt throughout the world.

Italy, one of the nations most deeply interested in maintaining peace, promptly followed the example of Great Britain.

On the 24th November, 1873, the Deputy Mancini, Ex-Minister of Justice, submitted the following proposal to the Italian Chambers :—

"The Chamber trusts that His Majesty's Government will endeavour, in their relations with foreign Powers, to render arbitration an acceptable and frequent mode of solving, according to the dictates of equity, such international questions as may admit of that mode of arrangement, as well as to introduce opportunely, into any treaties with those Powers, a clause to the effect that any difference of opinion respecting the interpretation and execution of those treaties is to be referred to arbitrators, and to promote conventions between Italy and other civilised nations of a nature to render uniform and obligatory, in the interest of the respective peoples, the essential rules of private international right."

An admirable speech delivered in its support by the Chevalier Visconti Venosta, Minister for Foreign Affairs, secured an unanimous vote of the Chamber in behalf of the proposal of arbitration.

On the 21st March, 1874, Mr. Jonas Jonassen, in the second Chamber of the Swedish Diet, proposed, and the Chamber approved by 71 votes to 64, the following motion :—

"That the Diet is desirous of presenting a humble address to His Majesty to pray that on all occasions when foreign Powers either with Sweden or amongst themselves, shall open negotiations concerning the establishment of Permanent Courts of Arbitration with a view to conciliate international differences, His Majesty would be pleased to give the same his support."

On the 17th June, 1874, Mr. Boardman Smith, of New York, submitted the following resolution to the House of Representatives of the United States at Washington.

"Resolved—That the President is requested by this House to provide in future treaties between the Government of the United States and foreign Powers, whenever practicable, that war shall not be declared by either of the contracting Powers against the other until an effort shall have been first made to settle the alleged cause of offence by impartial arbitration."

On the 17th day of June, Mr Orth, Chairman of the Committee on Foreign Affairs, reported back the said resolution amended as follows :—

"Whereas war is at all times destructive of the material interests of people, demoralising in its tendencies, and at variance with an enlightened public sentiment, and whereas differences between nations should, in the interests of humanity and fraternity, be adjusted, if possible, by international arbitration ; therefore,

"Resolved—That the people of the United States, being devoted to the policy of peace with all mankind, enjoying its blessings and hoping for its permanence and its universal adoption, hereby, through their representatives in Congress, recommend such arbitration as a national substitute for war, and they further recommend to the treaty-making power of the Government, to provide, if practicable, hereafter in treaties made between the United States and foreign Powers, that war shall not be declared by either of the contracting parties against the other until efforts shall have been made to adjust all alleged causes of difference by impartial arbitration."

The House adopted also the following resolution :—

"Resolved by the Senate and House of Representatives, that the President of the United States is hereby authorised and requested to negotiate with all civilised Powers who may be willing to enter into such negotiation for the establishment of an international system whereby matters in dispute between different Governments agreeing thereto may be adjusted by arbitration, and, if possible, without recourse to war."

In December, 1874, Mr. Bredius and Mr. Van Eck, submitted

to the Second Chamber of the States General of the Netherlands, the following proposition :—

"The Chamber expresses its desire that the Government should negotiate with foreign Powers for the purpose of making arbitration the accepted means for the just settlement of all international differences between civilised nations, respecting matters suitable for arbitration ; and that until this object has been accomplished, this Government will endeavour, in all agreements, to be entered upon with other states, to stipulate that all differences capable of such solution, shall be submitted to arbitration."

This motion was carried by a majority of 35 votes against 30, 15 members being absent.

On the 14th August, 1874, a treaty was concluded between Belgium and Peru, the 19th Article of which is expressed in the following terms :—

"If, by any unfortunate conjuncture of circumstances, differences between the two Powers should occasion an interruption to their friendly relations, and that, after exhausting the means of amicable and conciliatory discussion, the object of their mutual desire shall not have been completely attained, the arbitration of a third Power, the common friend of both parties, shall be invoked by common agreement, in order by this means to obviate a definitive rupture."

Finally Belgium, one of the most prosperous and liberal of the European States, whose monarchs have distinguished themselves on various occasions in the arrangement of international differences, also declared her adhesion to the system of arbitration. Messrs. Couvreur and Thonissen brought it forward on the 11th December, 1874, in the following shape :—

"The Chamber expresses its desire to see the practice of arbitration extended amongst civilised nations to all such differences as are susceptible of an arbitral decision.

"It invites the Government to concur, when opportune, in the establishment of the rules of procedure, to be followed for the constitution and carrying into effect of a system of international arbitration.

"The Government, whenever it shall consider it practicable to do so without impropriety, will endeavour, while negotiating treaties, to cause it to be admitted as a principle that such differences, as may regard something with reference to their eventual execution, shall be submitted to the decision of arbitrators."

83 members were present at the voting, and of these 81 declared themselves to be in favour of the resolution, and 2 abstained from recording their votes.

The Belgian Senate adopted, on the 16th February, 1875,

with absolute unanimity, the resolution of international arbitration previously carried in the Chamber of Deputies. The resolution was proposed by the Baron T'Kint de Roodenbeke, and supported by the Minister for Foreign Affairs (Count Aspremont-Lynden) and by the Baron D'Anethan. All 38 senators who were present voted in favour of the resolution.

However little we may examine the returns of the votes given by legislative bodies in favour of arbitration, it will be found that they are rather the expression of a legislative desire, than the utterance of a decree; and it could not be otherwise. Not only would this be in accordance with the dictates of prudence (for to establish so radical a change in the external policy of nations, ought not to be attempted in the parliamentary discussion of a day), but a positive and decisive vote of the ordinary assemblies in any sense, whether in favour of arbitration or in opposition thereto, whether for peace or for war, would be unconstitutional; inasmuch, as I have before observed, the right of declaring peace or war is at present, and, until the political codes of monarchies shall undergo modification, will continue to be, a prerogative of the crown.

All that it is possible to effect, during the existence of this constitutional difficulty, is to cause the votes passed by parliaments in favour of arbitration to reach the heads of the state; in order that Sovereigns may be induced to exercise for the good of the human race, one of the most transcendental of their prerogatives; and in order that the right of war, inalienable as regards the individual, may be claimed and set forth in the charters of the nations.

This historical summary demonstrates, that while arbitration *à posteriori*, or repressive, has been assented to and carried into execution in innumerable cases by Great Britain, the United States, Spain, France, Brazil, Portugal, the Argentine and Uruguay Republics, Morocco, Peru, Chili, Belgium, Prussia, New Granada, and Costa Rica, the principle of arbitration *à priori*, or preventive, was agreed to and practised for

centuries amongst the most civilised nations of antiquity; has been stipulated since the Congress of Paris, in different treaties between two several states, by Belgium, Sweden and Norway, Siam, Spain, Portugal, Peru, and Uruguay; and has been voted in the Chambers of England, Italy, Sweden, the United States, Holland, and Belgium; a fact equivalent in signification to the parliamentary adhesion of 100 millions of individuals of distinct races, without the inhabitants of its colonies; and everything leads us to hope that the majority of those nations which are governed by a representative system, will decide in favour of a plan of arbitration stipulated *à priori*, than which no more powerful agent exists to smooth away international differences.

From hence it is to be deduced that those Governments which have, in the treaties entered into by them, accorded the principle of arbitration preventive, such as Belgium, Sweden and Norway, Siam, Spain, Portugal, Peru and Uruguay, and the Governments of those states wherein the Legislative Power has pronounced itself in favour of a preventive arbitration, viz., England, Italy, Sweden, the United States, Holland, and Belgium, or say eleven in all, are in a condition to stipulate arbitration amongst themselves (and have a moral and political duty to discharge in so doing), laying down in special compacts the application of such arbitration, the forms and procedure to be followed in the cause at issue and the constitution of the Tribunal of Arbitration which is to determine it.

Just as Great Britain freed her slaves, without waiting (in spite of the clamours raised by the West India owners), until other nations should have abolished slavery; just as the United Kingdom, Holland, Belgium, and Switzerland, made their first step on the road to free trade by lowering their customs' tariffs, without waiting until other nations, more ruled by protectionism, should offer reciprocal reductions in their customs' tariffs; in like manner now might Great Britain, Italy, Sweden, the United States, and Belgium, enter into commercial conventions amongst themselves, without waiting until other

nations adhered to the principle of *à priori*, or preventive arbitration.

And Great Britain,—which has been the disseminator of religious, political, and commercial liberty throughout the globe; which has abolished slavery; which counselled arbitration at the Congress of Paris, and set the example of obeying its principles at those of London and Geneva, and submitted to the arbitral decrees of the German Emperor, and of the President of the French Republic;—has no lesser interest, while she possesses greater authority than any other power, in overcoming those difficulties which will undoubtedly have to be coped with whether in concerting a league of contracting powers in a single treaty, or in the negotiation of special conventions with each several state.

If, contrary to my expectations, the English Government shall decline to accept this initiative, some other Government will assuredly find an occasion, by so doing, to merit the sympathies of the truly civilised world.

The Czar declares that the Imperial Alliance have no other aim than the maintenance of peace needed by all states; and Russian diplomacy is helping the agitation in favour of international arbitration. The *Dziennik Polski* has published a reply from the Baron Jomini the President of the Brussell's Conference to the "Ligue de la Paix," in which appear the following lines:—

"Le second empire a mis fin à la paix qui régnait en Europe depuis quarante-cinq ans. Ce fut un grand malheur; mais il peut en résulter quelque chose de bon. En ce moment-ci, toute l'Europe, les gouvernements, aussi bien que les peuples, protesterait certainement contre une nouvelle guerre. Cette protestation serait déjà un appui moral pour la paix. Le devoir de la diplomatie est de consolider cet appui. Si elle y parvient, elle préparera le succès de l'œuvre à laquelle vous travaillez. L'accord de l'Europe serait le précurseur de l'établissement d'un tribunal arbitral. Travaillez donc avec courage pour récolter le fruit precieux que vous semez. La diplomatie Russe vous aidera autant qu'elle le pourra, car le maintien de la paix est une des conditions vitales de la Russie."

No one can be unaware that long years will have to pass before many nations may consent to submit their existence,

their independence, and their national honour, to the decision of one Court, although they would have nothing to fear in the presence of a high, worthy, and impartial Supreme Tribunal of Nations, administering justice according to a moral code.

But leaving on one side, as exceptional, the difficulties and conflicts which relate to what are now termed existence, independence, and national honour, it would be a great step in advance to negotiate arbitration *à priori*, formulating its judicial course of procedure in the first instance, and in appellation, even in case of there being found only two states willing to agree thereto.

A preventive, general, limited, or even, if so preferred, simply a special arbitration, once accepted, many details would still remain to be studied with reference to the adjudications and judicial procedures to be followed, and as to the composition and jurisdiction of the international tribunals, all which I will not attempt to regulate. Until such time as some other organisation in the code of positive laws be arranged, it would seem most advisable for the present to constitute a special tribunal for each several case, to be appointed by the parties in litigation; and should these not agree, to determine the matter in dispute by a High Court, composed of special Tribunals or Courts, appointed previously to making the treaty. This Supreme Court might be composed of magistrates appointed for life and magistrates appointed decennially, endowed with the requisite amount of capacity and experience.

Perhaps, in order to accustom nations to a rational discussion of their disputes, it would be a great step for them to agree to lay all their differences before a Court of Arbitration, and, in the event of refusing to submit to a primary sentence, or to one pronounced after appeal, then only to decide upon war in accordance with a resolution of the Chambers, or the general vote of the people.

But it is important not to exaggerate the advantages of arbitration, which, although it may be the best means of appeasing conflicts, just at the present time, and as long as no

positive law of international rights be in existence, yet it cannot always prove the most perfect or the most just solution, when essential elements of differences between nations take place, which can alone be found in a Magna Charta of all states applied by an International Tribunal.

IV.

TRUCE OF PEACE.

"Brought up in the camp, I have been ever familiar with war, and am acquainted with all its calamities. No conquest can console a country for the blood of its children, shed in foreign wars. It is not the physical dimensions of a country that constitute its strength. This lies rather in the wisdom of its laws, the greatness of its commerce, the industry of its people, and the national spirit by which it is animated. Sweden has lately suffered greatly, but the honour of her name is unsullied. She is still a land sufficient to supply our wants, and we have iron to defend ourselves." —(Address from the Marshal Bernadotte to the King, and to the Assembled States of Sweden, 5th November, 1810.)

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In the present century which has erased from civilized nations the stigma of slavery and serfdom, which has raised the workman and woman above the abject condition in which they were born; which confers a government progressively becoming more liberal, even upon nations where the pyramids of Egypt, the snows of Russia, and the religious fanaticism of Japan, would have seemed to establish the limits of modern representative governments; which has created steam and utilised electricity in order to prepare and forward the universal fraternal embrace of nations; in this latter third of the century, we live in an agitated and hazardous peace, which the telegraph threatens at any day to interrupt by the announcement of the assassination of a consul, the capture of a vessel, or the hostility exhibited by the press against a foreign government; whilst no positive moral law exists which might constrain and chastise violence, or shield a weak state from the assaults of a stronger one.

In both hemispheres those races which have advanced through successive grades from the most primitive dawn to the most perfect modern stage of civilization, have created formidable arsenals of destruction for land and sea; and keep constantly under arms seven or more millions of men, ready at the first signal for the onset to plunder, cut down, burn and slaughter, according to the latest improvements in the art of destruction.

During the present peace, which the Emperor of Germany asserts to be as calm and lengthened as that which Europe

enjoyed during the twenty years which preceded the reconstruction of the Germanic Empire, cultivated and religious Europe arms and arrays more than five millions of soldiers, or as many in number as the whole population of Belgium; annually expends in war about three hundred millions of pounds sterling; and if to this we add three hundred and fifty millions of pounds interest upon National Debts chiefly contracted for war purposes, we have an amount of more than six hundred and fifty millions per year, or say nearly two millions per diem as the sum which Europe in these latter years dedicates to secure her own extermination and destruction. And as it is impossible to estimate the cost of pauperism in Europe it is well to remember that in England and Wales alone £150,000,000 have been expended under that head within the last twenty-five years.

The deaths occasioned by the different wars which have occurred during the present century in Europe, Asia, Africa, and America, exceed in number the whole population of London; and it is absolutely impossible to calculate the myriads of millions which these wars have cost and these wars have destroyed.

And absorbed as we are in our preparations to resist wars between nations, we never imagine that we are by such a system exposing ourselves to provoke a social war of classes, and we forget the existence of more than five millions of destitute poor who afflict the heart of civilized Europe with their piteous lamentations—five millions of labourers who deeply and keenly feel the consequences of resolving international conflicts by means of force and enormous war imposts, and who might in their turn determine to attempt the employment of force, and in their brutalized desperation devastate with the firebrand of socialism the achievements of many generations.

Surrounded by millions of soldiers and millions of beggars, pressed down under the weight of millions of debt, devoting the larger portion of our revenue to war and the minimum to education, we have in our own times witnessed the rapid disappearance of ancient dynasties and the aggrandizement of recent ones, the sinking and rising of empires, the dismemberment of

peoples, and the construction of heterogeneous nations; whilst the political map of Europe has undergone such transformations, and so many others are contemplated, that scarcely a year passes without the appearance of projects for new frontiers of nations, independency of provinces and neutrality of zones, most frequently without taking into account the will of the inhabitants concerned, and without promoting in any wise by such mutations the happiness of the individual.

Some nations are in a state of bankruptcy, others advance towards it with precipitate steps, with annual deficits ever augmenting in amount; the smaller number only contriving, by dint of enormous sacrifices and the creation of swarms of mendicants, to meet the obligations they have contracted.

The sea and its shores become the tomb of the mariner, the rivers sweep away the fruits of the labour of generations, fire converts to ashes the monuments intended to perpetuate glorious traditions and the fabric which sustains the humble abode which affords shelter to the wretched labourer. The human race is decimated by the want of air, water, light, and wholesome food; and yet, in spite of these calamities, nations and armies, like hordes of savages make war against each other, strewing the fields with corpses, the cities with ruins, and the population with invalids; and, their senses intoxicated with the smell of the powder and the sight of human blood, intone praises to the Most High after having committed such a sacrifice. Rulers forget to contend against the rivers, the seas, the fire, and the epidemics which threaten them, or to unite all their physical and intellectual powers in the endeavour to render human existence more lengthened and more happy; to educate every people throughout the globe, bringing health to their hearths, diminishing the cost of production, rendering mercantile exchanges more easy, spreading the benefits brought by steam and electricity through all the regions of the globe, breaking through isthmuses, changing and directing the courses of rivers in order to convert into pleasant gardens the districts now laid waste by their waters, extracting from the earth and the ocean the treasures which

they hide in their depths, and lastly availing themselves of those powers of nature which are now contrary to us, and transforming them into powerful and salutary instruments of human activity.

The Emperor of Austria utters his wishes for Peace at Venice; the Emperor of Germany pronounces for Peace at Milan, and repeats the term in his message to the Imperial Parliament; the Emperor of Russia says Peace at Berlin, and reiterates the word at Petersburg; the three Northern Emperors declare it; Peace is recommended by Parliaments when discussing the war estimates; Peace is pleaded at the workmen's meeting; Peace is the cry of the human conscience when appealing to the conscience of nations. Although never were more decided and frequent declarations made in favour of peace, every month we see the personnel and materiel of war augmented, reformed, and strengthened; because each of the nations and the whole of them together have no faith in the sincerity of the protestations in favour of peace of the rest. But time, financial difficulties ever increasing, and pauperism with its daily hecatombs of victims, will, in the end, overcome the inertia of statesmen; and when these once come to consider that they are at the present time acting in subjection, not to the sovereignty of reason, nor of the number who long for peace, but to the audacity of the few, the illegitimate interests of the minority, and their own indifference, they will then make war against war.

The new evolution of internationalism will follow, through periods of uneasy peace and Titanic wars, that law which time has imposed with greater or less force upon religious, political, and economic ideas, from the moment of their origin, when they were baptized with the name of "Utopian," until, after having endured a desperate resistance, they were crowned by triumph at the termination of their struggle.

In the presence of the noble temples which the pagans raised to their gods, the majestic fanes erected by Christianity must needs have seemed "Utopian." "Utopian" in the presence of

the stakes upon which the Roman Emperors heaped the Christian martyrs, the stakes upon which the Christianity of the Holy Office of the Inquisition was afterwards to consume the martyrs of thought; and no one would venture to assert that posterity will not pronounce the death inflicted by the leaden missiles of war to be as barbarous and inhuman, as we now judge that to have been inflicted by fire at the stake.

In the twelfth and fourteenth centuries, when Philip II. and Philip V. of France banished the Jews; in the massacre of St. Bartholomew provoked by Charles IX. in the sixteenth century; in the subsequent wars under Henry III. and Henry IV., between Huguenots and Catholics, it would have seemed "Utopian" to prognosticate that at the present day Catholics, Protestants and Jews would be living side by side in the French Republic, united by ties of kindred and race.

During the wars of invasion of Buddhism in Asia, of Mahometanism in Europe, of the Crusades in the East, and of the Religious Reformation in Europe, the termination of religious strife would have appeared impossible; and although, upon more than one occasion recently, a war of religion has been announced as almost inevitable, it is my belief that any conflict which might break out either in the heart of Europe or on the frontiers of Asia, will be in reality a question of territory or a struggle of dynasties, only assuming perhaps religion as a pretext, in the same way that the Government of France seized the occasion of the Hohenzollern candidature, hoping to carry her frontiers to the Rhine.

In the time of the early Republics it would have appeared "Utopian" to believe that the slave should disappear from the soil of Greece, of Sparta, and of Rome; in the days of Father las Casas that the rights of a man should ever be conceded to the Indian of America; a century back that African slavery should be extinguished; or, before the Crimean War, that serfdom should be abolished in Russia. When the Emperors of the South carried off their prisoners of war to fight wild beasts in the Roman Circus, it would have been "Utopian" to have

imagined that the Emperors of the North should in the present day attempt the settlement by International Conventions of the fate of the prisoners taken in modern warfare, far bloodier in its results than the devastating wars attending the invasion of the Northern barbarians.

It would have been "Utopian" to have supposed at the commencement of the present century, that a race as much separated from Europe by their religion, their language, and their history, as divided by distance, should have uprisen in Japan, endowed with an intelligence, an energy and a power of assimilation so marvellous, as to traverse in a few years a greater distance on the road of modern civilization than some of the states situate in the heart of Europe have gone in many ages; and that in the present year the Mikado should have inaugurated two Representative Assemblies in Japan.

When England in the fifteenth century occupied an extent of territory from Normandy to Gascony; when she still retained, a century later, possession of Calais; when in the eighteenth and in the beginning of the nineteenth centuries Great Britain formed and supported upon the Continent every sort of alliance against France with arms, soldiers, and treasure; when at sundown of the 18th June, 1815, the fortunes of an Empire and an Emperor, who had enslaved the world by their gigantic conquests, were surrendered to an Irish general; after Frenchmen had fought with Englishmen for seven consecutive centuries (1110—1815) in 272 wars or nearly one for every two years; in 1815, I say, it would have appeared "Utopian" to have foretold that these nations of distinct race, who had been for seven centuries transmitting from father to son their hatred and vindictiveness, and abhorred each other with the same intensity as the Roman conquerors and the Carthaginian vanquished, should have dwelt together for sixty years in great harmony and confiding familiar friendship.

It must once have seemed "Utopian" to imagine that the English people, which put ten thousand French prisoners to the sword at Azincourt, which sent the Maid of Orleans to the stake

at Rouen, which devastated the fields and burnt down the dwellings and factories of France, was destined to become in our days her philanthropic and Christian friend in the last struggles of the unhappy Republic, sending her treasures and her consolations to the perishing inhabitants of Paris, doubly stricken in their country and their lives, by the exterminating war and famine of 1870 and 1871.

But sad was the result for France of her "Utopia" of the conquest of the Rhine in 1870, the realization of which would not have bestowed superior privileges, greater wealth, or fuller happiness upon the French people, while it would only have left the German nation eager in their preparations for retaliation. If the Imperial Government, instead of mixing itself up with the choice of a monarch for an unfortunate nation, which for a whole century had been enduring a struggle between liberty and reaction—using rightly that prestige derived from her situation, resources, energy and language, with which France has been endowed by nature—if the French Empire, with that ardour it had shown in adopting glorious ideas, had rightly comprehended the Great Crusade of Peace, and realizing her own motto of "L'Empire c'est la Paix," had promoted the Constitution of an International Assembly in order to found the Code of Nations, Frenchmen would not at this day have been burthened with tributes and with debts—would not have to lament the loss of two of their richest provinces, and France would at the present time have been the state enjoying the greatest prestige in the civilization of both worlds.

But that also was an "Utopia" too dearly purchased at the price of blood and treasure by France and Great Britain, the fatal policy which decreed the War of the Crimea; and those who, twenty years back, were styled visionaries, if not unworthy sons of their country, because they attempted to avert an European War, and secure the opening of the Dardanelles, are now judged by historians to have been more far-seeing, more just and more Christian, than those who demanded the death of 70,000 men, the expenditure of more than £30,000,000, and

required 15 years to pass away, before they could understand at length, in 1871, that it was impossible to sustain the Utopia of 1856; and found that it had become necessary in London briefly to annul the Treaty of Paris—the observance of which the issue of arms had only succeeded in enforcing for a few years.

Who would have ventured to predict to Palmerston or to Stephenson, when they pronounced the project of the Canal of Suez to be an Utopia, that that very Utopia would this year afford transit on his voyage to the first heir of the British Crown who has visited India; and that in these days, the Government of the United Kingdom, anxious to secure the best route to her Oriental Empire, should, in their patriotic impatience, prefer to purchase from the Khedive his shares in that very Utopia, in lieu of waiting—until the freedom of transit was better secured?

It is undeniable that public opinion, legislative and sovereign in this country, has, after seven centuries of warfare, come to a halt; and the practical spirit of the English people has so greatly assimilated itself to modern reasoning, that we, at the present day, resort to Great Britain as to the Temple of Peace, from all the distant corners of the world, to solicit the favour of her divinities and carry back the new religion to our lares.

A fact which likewise inspires the heart with great expectations, and which perhaps would have been characterized as Utopian during the siege of Paris, is the rapid development of commerce between France and Germany. Almost before the wounds of that Republic can have been healed over, before she can have completely re-adjusted her industrial organization, and in spite of the political animosity which in an impassioned and susceptible people must oppose itself to commercial relations, these appear to be, in 1873, of even greater importance than in 1869, the year before the war; for France, which exported to Germany in 1869 to the value of 253,000,000 francs, has in 1873 exported 465,000,000; and Germany, which exported to France in 1869 some 230,000,000, in 1873 has exported 315,000,000.

It is likewise certain that never have such reiterated, united,

exalted, and universally popular cries for peace been uttered as in these days following after the sanguinary Franco-German struggle, wherein the lugubrious spectres of war seem to be contending against the dawning rays of a more serene peace; and if, as the Emperor of Germany said on the 27th October last, upon inaugurating the Sessions of the Imperial German Parliament, "the continued preservation of peace is so far as human judgment can pronounce, more assured than at any time during the twenty years preceding the reconstruction of the German Empire;" if, as the Czar asserted last December at the Annual Festival of the Knights of St. George, "the intimate alliance between our three empires, still remains intact at the present moment, when it has no other aim than the maintenance of tranquility and peace of Europe;"—never at a moment more auspicious than this; while the memory still preserves indelible the sad records of the last war, and when reflection begins to recognize in the example of France the senselessness of an historic internecism with the policy of arms and its interminable attendant series of alternate revenges, and seeks to initiate a harmonious internationalism fortified with institutions, which testify to a real progress in the morality of the nations.

Fortunately such is the mutual interest which liberty goes on creating amidst all classes of society, and such the solidarity of interests which by consequence of the rapidity and frequency of their means of communication is being established between individuals of nations dwelling in regions very far apart, that the International Question, confined at the beginning of the century to a few philosophers and eminent statesmen, is at the present time publicly discussed as a social question every day in all countries and by every class of society, from the cabinet of the diplomatist to the workshop of the operative.

Time will in the end convince civilized nations that moral and material felicity do not depend upon their extent of territory or their military forces by sea and land, but upon their culture, their powers of production, and their mechanical appliances for utilizing and transporting the fruits of their industry.

Time and morality will in the end exhibit to Emperors and Kings, to Princes and Presidents of Republics, to the Sultan and to the Mikado, to Sovereigns and to their peoples alike, the cynical injustice with which the same society, which condemns the father of a family out of work for the theft committed to obtain food for his starving children, displays in her public squares and museums as a monument of her glorious conquests, the booty of her own brigandage; or seizes by force, attended by every circumstance of atrocity, whole territories and peoples —crimes which, if committed by private individuals, would in those very states have been punished with the barbarous penalty of death.

Time and the progress of civilization will go on gradually effecting a reduction in the expenses allotted for war, and for the relief of the poor, and augmenting those devoted to education; so that it may no longer appear as now that war and pauperism together consume in cultured Europe annual estimates twenty times larger in amount than those applied to public instruction.

And public opinion, in those countries which are most advanced, will go on rendering each king the most illustrious and beloved of its citizens; will make of each citizen a semi-king; will substitute in lieu of "*l'Etat c'est moi*" of monarchs who declare war, "*l'Etat c'est moi*" of the individual to whom the right belongs to make it, and who in fact pays its cost and suffers its burthens; and will force public powers to promote the constitution of an International Representative Assembly which shall regulate the international relations of the peoples, and a tribunal wherein justice shall be administered.

History constantly teaches us that no power is more unstable and precarious than that obtained by war, whose weapons, in the long run, are turned against the victor. As if to establish an historic axiom and to give a lesson alike to governors and the governed, the ages in their course avenge themselves for the iniquities committed by the great powers of ancient race; and Tribunes, Consuls, Emperors and Kings; Empires, Monarchies, and Republics, in Greece, Rome, Spain, and France, have

expiated their crimes; those arms whose clash accompanied them in their triumphs, were the instruments which afterwards drove them from the summit of the throne to the recesses of the tomb—from the Capitol to the Tarpeian Rock.

Instead of sustaining an armed peace as costly as war, which might, as the Emperors of the North assure us, last for many years, but which we fear might be broken at any moment—instead of increasing year by year the military expenditure, when Lord Derby, the Secretary for Foreign Affairs, says, on the 18th December, at Edinburgh, "that the Governments of Europe desire peace, and peace can generally be maintained where there is the wish to maintain it,"—it would appear preferable to enter into a temporary or compromissory truce by an international union for ten, five or three years. In this brief but tranquil period, the whole of the states concerned might and would reduce enormously their standing armies and war supplies, with a view to diminish the weight of their taxes and the number of their poor; they would submit their international differences to an arbitration, or would postpone their solution until after the expiration of the truce; the different states would nominate an International Representative Assembly in order to establish the New Code of Nations, and the evident benefits resulting from a period of peaceful tranquillity would create a serious check upon the tendency to future wars.

The Chief of the State, Prince or President, enlightened by the teachings of history, inspired by the precepts of the Christian religion, animated by an ambition, befitting as none else, those who have sprung from royal lineage, or who by their actions have won from the popular voice the title of first Magistrates of their country—the Prince or President who shall be the first to propose a lustre of peace, accompanied by a mutual disarmament, an arbitration and the constitution of an International Assembly of the States, will be hailed as a sovereign over the hearts of all nations, and the blessings of posterity will salute him as the Civilizer, for the God of War is the Demon of Civilization.

BRIGHTON. *December*, 1875.

PRIZE ESSAYS

INTERNATIONAL LAW.

National Association for the Promotion of Social Science,

WITH WHICH IS UNITED THE

Society for Promoting the Amendment of the Law,

1, ADAM STREET, ADELPHI, LONDON.

PRIZE ESSAY UPON INTERNATIONAL LAW.

His Excellency Senor Don Arturo de Marcoartu, ex-Deputy to the Cortes in Spain, has, through this Association, munificently offered the sum of 300*l.* for the best Essay on the following subject:—

"In what way ought an International Assembly to be constituted for the Formation of a Code of Public International Law; and what ought to be the leading principles on which such a Code should be framed?"

The following are the conditions of the Prize:—

I. Competitors to send in their Essays on or before the 1st of June, 1874, under cover, with motto on the cover, and a sealed cover with the same motto containing the name and address of the author.

II. The Essay may be either in English, French, or German, and should have with it an Index.

III. The Adjudicators will be appointed by the Executive Committee of this Association, and they will be selected so as to form a body having an International character. The decision will be by the written vote of a majority of the judges.

IV. If in the opinion of the Adjudicators none of the Essays are of sufficient value, the sum named will not be awarded, but the Donor will offer the same prize of 300*l.* for further competition.

V. The Adjudicators shall have power to give one prize of 300*l.*; or two prizes, one of 200*l.*, and one of 100*l.*

VI. The Donor to be entitled to the Copyright.

G. W. RYALLS,
General Secretary.

August 3, 1873.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.

Proceedings on the Distribution of International Law Prizes, presented by His Excellency Senor Don Arturo de Marcoartu, at the Annual Congress of the National Association for the Promotion of Social Science, held in the Dome of the Royal Pavilion at Brighton, the 9th October, 1875.

The Right Honourable The Lord Aberdare, the President of the Association, in the Chair.

C. W. Ryalls, LL.D., Barrister-at-Law, the General Secretary of the Association, in introducing the two successful competitors to his Lordship, spoke as follows:—"My Lord Aberdare—We now approach what is, to two gentlemen at least, the most interesting and pleasant occasion in this Congress; and I venture to think that the interest and pleasure in this occasion is not confined to the two gentlemen immediately concerned, whom I shall now have the pleasure of presenting to your Lordship. Nearly three years ago, a sum of £300 was offered by his Excellency Senor Don Arturo de Marcoartu, for the best essay or essays upon the following question:—'In what way ought an International Assembly to be constituted for the formation of a code of International Law, and what ought to be the leading principles on which such ought to be framed?' The Association accepted the offer, and as soon as was possible intimated it to the world. The offer was widely advertised in different countries in the newspapers; an intimation was sent to every embassy in London that the prizes had been offered; and a request was made that they would use such means as they were able, to make the fact known in the different countries which they represented. The result was that in the three languages in which the essays might be written, namely—English, French, and German—twenty-nine essays were received. These essays were laid before three adjudicators appointed by the council of the Association, who kindly undertook the gratuitous task of reading and adjudicating upon them. Those adjudicators were Mr. John Westlake, Q C., Mr. H. D. Jencken, and Mr. E. E. Wendt. When the envelopes marked with the mottoes were opened it was found that the first prizes had been awarded to Mr. Abram Pulling Sprague, of the New York and United States Bars. (Applause). Mr. Sprague is a gentleman whose career had not been hitherto undistinguished, for whilst he was a student at the Maddison University, in the State of

New York, he gained the senior oratorical prize. He has since been practising at the bar of his native country; and in addition to his practice he has devoted himself to literature, and particularly to that dignified and very serviceable branch of literature of editing a legal publication, viz., the Albany Law Journal, a publication well-known and esteemed by thoughtful lawyers of this country. It is not for me, in presenting these gentlemen to your lordship, to speak of the merits of the question on which they have successfully written these essays. As I observed, Mr. Sprague is a citizen of the United States, a State famous for the vastness of its territories, the immensity of its resources, and the enlightened spirit of progress which marks its people. In any of the future modifications of the empires of the world, and in the international disputes and discussions which must necessarily arise, the United States must have an influential voice, and it may be a happy omen for the future peace of the world that the most intelligent and practical answer to the question proposed has been given by a member of the American Bar." (Mr. Ryalls here presented Mr. Sprague to his lordship, who handed him the first prize of £200, and a handsomely illuminated diploma.)

Mr. Ryalls continuing said :—"The second prize of £100 was awarded to M. Paul Lacombe, of Lauzerte, in the department of Tarn-et-Garonne, an advocate of the French Bar, who had, however, abandoned forensic pursuits, and devoted himself to literature, and who is at present engaged in preparing a history of his native land, from which those who know him best expect much. He comes from a country which is nearer to us—a country, however which has recently suffered sadly from the miseries and curses of war. It may have been that what he was told, or what he has seen, of these miseries in his native land has inspired him to write with honour and advantage in favour of a more excellent system of determining the disputes of nations." (Applause). (Mr. Ryalls then presented M. Lacombe to the President, who handed him the second prize of £100. together with a handsomely illuminated diploma.)

The following is a copy of the illuminated diploma presented to the successful competitors :—

"National Association for the Promotion of Social Science, with which is united the Society for Promoting the Amendment of the Law.

"His Excellency Senor Don Arturo de Marcoartu having placed at the disposal of the Association the sum of £300, to be given as a prize or prizes for the best essay or essays in the English, French, or German languages, on 'What way ought an International Assembly to be constituted for the formation of a code of International Law, and what ought to be the leading principles on which such a code ought to be framed?'

"The first prize of £200 was awarded to Abram Pulling Sprague, of Troy, in the State of New York, in the United States of America, advocate, for his essay in the English language on the above-mentioned subject.

"The second to Paul Lacombe, of Lauzerte, Tarn-et-Garonne, France, advocate of the French bar."

Lord Aberdare :—"It is now my pleasing duty to call upon you to join me in thanking the author of this liberal donation—a distinguished Spaniard —Don Arturo de Marcoartu. (Cheers). I also congratulate the two distinguished

gentlemen who have been the fortunate winners of the prizes offered by him. I have had a conversation with Senor de Marcoartu on this subject, and I can assure you that he is no wild enthusiast. He does not expect these essays, however wise and eloquent and convincing they may be, at once to effect a change in the important direction he aims at, but he knows that every great cause must have a beginning. You have been reminded of an observation of Lord Russell, that no great change can be brought about in this country under 30 years ; as in this case we have a great many countries to study, we must expect that more than one generation will pass by before any substantial reform will be effected in the cause Senor De Marcoartu has at heart ; but at any rate the cause is a great one. (Hear, hear.) We see now all over Europe enormous armaments to which the hordes of Alaric and Attila cannot for a moment be compared. The evils brought in by the incursions of these two terrible chiefs of antiquity were, perhaps, more immediate and striking to the imagination than the evils caused by the maintenance of enormous armaments, but it may be doubted whether, on the whole, greater misery is not caused to mankind by the latter than the former. (Hear, hear) We want to see an altered feeling in the world on these subjects. It is more than two centuries ago since Milton told us that 'Peace hath her victories as well as war,' and evidently from the manner in which the statement is framed it is clear that the victories of peace were very occasional as compared with those of war. A hundred years later a distinguished countryman of M. Lacombe—Voltaire—wrote these lines,—

'Chaque nation a son tour à briller sur la terre
Par les lois et les arts, et surtout par la guerre.'

Now it is that miserable 'surtout' that we wish to get rid of. (Hear, hear, and cheers.) We do not want the chief distinctions either of nations or of men to depend on the success of warfare. Time was when such distinctions were very properly bestowed ; looking at our own era, indeed, we cannot fail to recognise the fact, when the blue-eyed myriads from the Baltic coast were obliged, by the increase of population, to rush upon the south, great fame was necessarily won by their leaders, and great fame was won also by those who successfully resisted their attacks. So again, after the breaking up of the Roman Empire, in the struggle which every country has gone through to consolidate a nation, we see that war could hardly be prevented. But that work now appears to be done. (Cheers.) Nations pretty well recognise their limits, and it does seem to me that the time has come when illustrious warriors should no longer be the highest objects of our admiration. (Cheers.) Let them have the fair meed of praise due to them, but no more ; and I trust the time is not distant when all will concur in thinking that Washington, with his moral grandeur, is far superior to a Napoleon, with his immense intellectual capacity. (Loud cheers.) It is in order to obtain results which perhaps may be distant, but which are most desirable that this liberal Spanish gentleman has offered these prizes. We want to arouse a strong feeling of rebellion against this tyranny of warfare. We want to arouse good citizens of every country to protest against these enormous masses of the people being kept in arms for each others destruction. (Cheers.) We want a strong public opinion everywhere to be aroused and to establish a sort of Modern Amphictyonic Council, or, at any rate, to take some steps further than those which have

already been taken to approach a result so desirable. (Cheers.) I am sure that you, considering the object of this most liberal gentleman as one fully deserving of your approbation and the support of society, and I have no doubt that you will read with interest, when they are printed, the addresses of the two eminent men who have carried off the prizes. You and myself would not have been sorry if one of the prizes had been won by an Englishman, but we like, above all things, fair play. (Cheers.) We are glad to see merit distinguished from wherever it comes, and as no Englishman has had ability to win a prize, we are glad to see that the first prize is taken by a country so closely allied to us as America—(cheers)—and that the next prize is gained by our nearest neighbour, long opposed to us in war, but now closely connected with us by the bonds of peace." (Loud cheers.)

His Excellency Senor Don Arturo de Marcoartu, who was received with cheers, said:—"A feeling of gratitude towards the hospitable British nation, so earnestly yearning for the peace of the world, and the grievous spectacle of the Franco-German war, in the first instance, and, to me, the yet more afflicting sight of the strife which dyes with crimson the rich mountains and fertile valleys of my own country, have been the motives which have led me to offer this humble testimony to the National Association for the Promotion of Social Science, which, during the last few years, has devoted its attention to the cause of public welfare.

"I cannot forget that my own parents visited this classic land of freedom as political exiles, and here found a home and country wherein to shelter their persecuted liberties. I shall ever remember with an emotion of gratitude, that from hence issued those treasures and blood which aided us Spaniards in our struggle for independence in 1808, and in reconquering our liberties in the first war of succession of the present century. (Hear, hear.)

"When France, Germany, and Russia denied us existence as a nation, England gave prodigally to the Iberian Peninsula the lives of her soldiers and the stores of her banks. (Cheers.)

"In these latter years I knew Richard Cobden, one of the few who have merited the love and respect of all his contemporaries, and who will continue to be more and more the object of admiration to future generations.

"Cobden and Adam Smith, amongst those passed away, and numerous other eminent statesmen of the United Kingdom yet happily amongst the living, have been my leaders in that humble public life I have endeavoured to follow, in the attempt to do the best I might be able in behalf of my country and in the cause of humanity. (Cheers.)

"Two principal objects, intimately related, were proposed by me in the theme fixed for the competition. One was, to demonstrate yet again—for it has been done before the present generation—the imperious, and I ought perhaps to add the immediate necessity, for the establishment of a national code to guide us amidst the chaos of the strife and rivalry of nations. My other proposal was to bring forward once more a discussion as to the best means of rendering wars more and more difficult, more and more distant, less and less grievous in their infliction.

"As an evident proof of the attention paid by publicists to the international question, I am about to mention two facts, which came to my

knowledge long after the announcement of the competition. In 1829 the American Peace Society offered a premium of thirty dollars for the best dissertation on a Congress of Nations. 'Only four or five dissertations were handed in, and all of them of a very ordinary character.'

"In 1830 the late Count de Lellon, member of the Sovereign Council of Geneva, the founder and president of the peace society of that canton, offered a prize of 400 francs for the best dissertation on this subject. It is unknown to me the result of this prize.

"The competition inaugurated under the auspices of the Social Science Association, produced twenty-nine Essays in England, the United States, Italy, and Germany, and even yet after its being closed, I am still in receipt of communications requesting to be informed until how late a time fresh essays may be forwarded. (Applause.)

"This flattering result I can only explain by the patronage which the Association extended to the object of the competition—a patronage highly honorific to myself—and also to the ever increasing interest now being felt in the International Question.

"For such a result I beg from hence to present to the authors of these memoirs my most sincere thanks.

"It is now my duty, and I fulfil it as a most honourable one, to manifest my gratitude to the Association; and I feel thoroughly persuaded that it will accord me a vote of thanks on behalf of the committee to whose care the details of the competition were especially entrusted, and another vote of thanks, not less well deserved, to the members of the jury (Mr. John Westlake, Q.C., Mr. H. D. Jencken, and Mr. E. E. Wendt) who undertook the onerous task of examining and deciding upon the merits of the whole of the memoirs, and to Mr. Ryalls, the General Secretary of the Association.

"I congratulate the prize writers (Mr. Sprague and M. Lacombe) with all my heart, believing they will not cease to aid us with their co-operation in the future.

"Finally, as a practical man, although I may appear to some rather too apt to indulge in flattering illusions, I will here record an episode of history which may serve to explain my hopes in the prospects of internationalism.

"It will soon be one hundred years since, in 1776, an individual arose in the British Parliament to wipe off the stain of slavery from the Christian community. (Hear, hear.) He found no voice to second his, nor a vote to record besides his own. It might have been said, nay, it was actually said, at the time, that the cause of abolition was defunct at its birth; that the Wilberforcian philanthrophy was a mere Utopian; that the negro was no man, and would be eternally the slave of the rest of mankind, for so it had been decreed by the fiat of the Creator. (Hear, hear, and cheers.)

"None of the shafts of ridicule, satire, and insult were spared, and yet more abominable means still were employed to cast opprobrium on the earlier redeemers of the African negro of the human merchandize.

"Before the expiration of sixty years, viz., in 1833, England devoted twenty millions sterling to the abolition of slavery, paying thus dearly the contemptuous silence of the British Parliament of 1776, and commenced a Titanic struggle in every corner of the globe; restoring human existence to millions of enslaved fellow beings, and establishing the most glorious title to renown ever owned by the British public. (Loud cheers.)

"The slave trade has ceased to exist, and slavery is day by day becoming rapidly extinguished amidst all civilized nations.

"A hundred years hence wars may break out still more terrible than that last one graven in crimson characters upon the shores of the Rhine, but there is room for the hope that nations will become more moralized, and that, after creating enormous loans—not for the purpose of emancipating races of civilised men from the slavery of wars, but for the purpose of perpetuating them—loans far greater than that devoted, in so Christian a spirit, by England to the abolition of African slavery; there is room, I say, for the hope that the principle of arbitration will réceive extension, that the right of declaring war will be invested in the people, and that, possibly, a Supreme Tribunal of Nations, and an International Assembly, may regularly exercise their functions within those states which shall be destined to bear the standard of future civilization. In either form the laws regulating peace and war will then have been ameliorated and established upon a basis of true civilization, and the middle age of the nations amidst which we now live, shall have approached nearer to its termination. (Hear hear, and cheers.)

"Let us be content to endure patiently, for the present, the theories of the visionary philanthropist, the imaginary politician and the Utopian; let us not be dismayed or discouraged at the indifference and inertia of the general public; and let us at least try to bring together the materials and instruments for raising the noble monument in future times. Perhaps, then, the owner of some name obscure as mine, will recognise the sincerity of our intentions, and the justice of these our feeble efforts." (Loud cheers.)

Mr. SPRAGUE said:—"It is almost superfluous for me to say that this occasion affords me the greatest gratification and pride. But I am glad to have this opportunity to thank the adjudicators and this Association for the distinction with which they have received my essay, and I can assure you that I esteemed it a great privilege to contribute to the discussion of one of the most important and difficult questions of modern times. I wish here to express my gratitude to the donor of these prizes. One of the most interesting and beautiful poems in the Latin language is that in which Horace praises his friend and literary patron, Maecenas, and I am sure that neither M. Lacombe nor myself will ever cease to remember and praise our 'Maecenas,' Arturo de Marcoartu; and I would express the hope that in all that has been done in connection with the contest for these prizes—in the benevolent conception and gift of the donor, in the liberal assistance of this noble Association, in the public and private attention which has been attracted to the question discussed, and in the disinterested and arduous labours of the adjudicators—in all this there has been much to advance the interests of international law reform and codification. I would express the further hope that much has been elicited for the promotion of the spirit of law reform in general, and that something has been added to the power of that sovereign whom one of your own English jurists, Sir William Jones, extolled, when he wrote—

> "'And sovereign law, the state's collected will,
> O'er thrones and globes elate,
> Sits empress, crowning good, repressing ill.'"

M. LACOMBE spoke as follows:—"Milord, Mesdames, Messieurs,—On

m'apprend à l'instant que je dois parler (il n'y a qu'une petite difficulté): c'est que je ne sais malheureusement pas parler Anglais. Permettez-moi donc de me borner à quelques mots en Français. Je prie d'abord son Excellence Don Arturo de Marcoartu et la Société pour l'avancement des Sciences Sociales de recevoir ici publiquement l'expression de ma vive et profonde gratitude. La distinction si honorable que j'ai reçue, venant d'une société aussi considérable que celle de l'avancement pour les Sciences Sociales m'aurait été sensible en tout pays; mais reçue en Angleterre, elle me cause une satisfaction particulière. J'ai eu toujours, en effet, pour l'Angleterre une grande affection, inégale sans doute à celle que j'ai pour la France, car tout homme doit aimer son pays avant tout; mais quant à l'estime, celle que j'ai pour l'Angleterre est tout à fait semblable à celle que j'ai pour ma propre patrie."

After a vote of thanks had been passed to the three adjudicators, the proceedings terminated.

C. W. RYALLS,
General Secretary.

THE CODIFICATION

OF

PUBLIC INTERNATIONAL LAW:

An Essay

ON THE WAY IN WHICH AN INTERNATIONAL ASSEMBLY OUGHT TO BE CONSTITUTED FOR THE FORMATION OF A CODE OF PUBLIC INTERNATIONAL LAW; AND THE LEADING PRINCIPLES ON WHICH SUCH A CODE OUGHT TO BE FRAMED.

PRO PACE NATIONUM.

By A. P. SPRAGUE,

COUNSELLOR AT LAW.

TO

HIS EXCELLENCY

SEÑOR DON ARTURO DE MARCOARTU,

WHOSE PUBLIC SPIRIT AND LIBERALITY HAVE RENDERED THE NATIONS HIS DEBTOR,

This Essay

IS VERY RESPECTFULLY INSCRIBED BY

THE AUTHOR.

PREFACE.

In August, 1873, His Excellency Señor Don Arturo de Marcoartu, observing the general attention which the Codification of Public International Law was receiving, and desiring to promote so grand and beneficent an object, offered, through the Association for the Promotion of Social Science, a Prize for the best Essay on the following Subject: "In what way ought an International Assembly to be constituted for the Formation of a Code of Public International Law; and what ought to be the Leading Principles on which such a Code should be framed." This Essay was written upon the subject presented, and under the conditions attached to the Prize.

Troy, New York,
June 1, 1874.

CONTENTS.

ARTICLE I.

Introduction.

Sect. 1. The international idea in common consciousness is of comparatively recent origin. The early social and political organizations were founded on the egoistic sentiment—the sentiment of self-preservation and self-aggrandisement. In the progress of the development of this sentiment the external organizations were regarded as enemies, and were preyed upon for egoistic purposes. Thus, each social and political organization was at enmity with all others, and conquest was the ordinary means of social and political advancement.

Sect. 2. Under such a condition of things some organizations were destroyed and others enlarged and strengthened by incorporating the fragments of the broken states, communities or families. Subjugation, conquest, war were the constant concomitants of the social and political organism in all ancient and medieval times. The order of the development of governmental ideas seems to have been as follows:—the patriarchal, the state, the national, the confederate, the international. It is unnecessary to give a definition of these several ideas and their corresponding organizations at present. It will only be necessary to say that as the world advanced and the governmental organizations, which had survived the era of perpetual warfare, began to communicate with each other in peaceful modes, and to understand each other, there arose the altruistic sentiment which revealed to mankind the fact that the best mode of national preservation and aggrandisement is that in which a promotion of the interests of others constitutes

a large factor. With the appearance of this idea in political consciousness—the idea not only of the "to live" but also of the "to let live"—wars began to decline in frequency and in cruelty. In this condition of things it is easy to see how the rise of the international idea became natural; and although the idea was entertained at an early period of national history by a few individuals of advanced views, yet it did not appear in the general consciousness until a few centuries since.

Sect. 3. Doubtless, the necessities of the case contributed much to the development of the altruistic sentiment in national life, the spread of the human race, the subsequent cohesion of large numbers in certain distant localities, the difficulty of carrying on wars with distant communities, the equality of strength among a certain number of communities, and the consequent necessity for some communities to permit other contemporary organized social and political life form a series of causes which led to the existence of separate and independent governments, and this was independent of the rise of the altruistic sentiment; although both necessity and sentiment may have concurred to produce the same result. Thus, with the natural necessity for the existence of independent governments there arose a necessity for peaceful intercommunication; and this accelerated the rise of the altruistic sentiment in the political consciousness, and it would not be difficult to show that the whole course of events for more than twenty centuries past has been preparatory to the development of the great international idea in human consciousness.

Sect. 4. The condition of the world before the first appearance of the altruistic sentiment in political life was, as I have said, that of perpetual warfare. The progress of the human race through the egoistic period is thus aptly described by Herbert Spencer in a recent essay on "Specialized Administration":—"At the one extreme we have that small and simple type of society which a wandering horde of savages presents. This is a type almost wholly predatory in its organization. It consists of little else than a co-operative

structure for carrying on warfare—the industrial part is almost absent, being represented only by the women. When the wandering tribe becomes a settled tribe, an industrial organization begins to show itself—especially where, by conquest, there has been obtained a slave-class that may be forced to labour. The predatory structure, however, still for a long time predominates. Omitting the slaves and the women, the whole body-politic consists of parts organized for offence and defence, and is efficient in proportion as the control of them is centralized. Communities of this kind, continuing to subjugate their neighbours, and developing an organization of some complexity, may nevertheless, retain a mainly predatory type, with just such industrial structures as are needful for supporting the offensive and defensive structures. Of this Sparta furnished a good example. The characteristics of such a social type are these—that each member of the ruling race is a soldier; that war is the business of life; that every one is subject to a vigorous discipline fitting him for this business; that centralized authority regulates all social activities, down to the details of each man's daily conduct; that the welfare of the state is everything, and that the individual lives for the public benefit. So long as the environing societies are such as necessitate and keep in exercise the predatory organization these traits continue; but when, mainly by conquest and the formation of large aggregates, the predatory activity becomes less constant, and war ceases to be the occupation of every free man, the industrial structures begin to predominate."

Sect. 5. By the decline of warfare, the increase of industrial institutions, the frequency and intricacy of communication among nations, we know that a period of peace-loving has begun, that the egoistic national sentiment is held in check, in some degree, by the altruistic national sentiment, that the disposition of the people of the civilized world has become more industrious and fraternal and less predatorial and inimical, and that there has been developed a genuine and permanent international sentiment. And this sentiment is

obviously on the increase. As the individuals composing the political organizations of the world become better and more generally educated—as the great masses of mankind become less soldierly and more citizenlike—as men become devoted to science, philosophy, art, history, industry, and every useful and peaceful thing—the sentiment which promotes individual, social, and national life, when directed to useful and beneficent ends, becomes more catholic and better established.

Sect. 6. The increase of this sentiment will go on in correspondence with the decrease of wars and the establishment of closer and more beneficial relations among nations. But it is impossible to believe that the international idea has acquired such magnitude and power as to control political organizations entirely; or to believe that the altruistic sentiment in national life has become sufficiently powerful to prevent all encroachment by one civilized nation upon another by means of physical force. The decrease of wars cannot go on any faster than the increase of international sentiment. We cannot bring about perpetual peace without perfecting international opinion and sentiment; and perpetual peace is as unlikely to begin in the nineteenth century as a perfect regulation of the sentiments and desires of all nations with respect to each other. The slow progress, in the past, in the development of the international idea and in the decrease of wars, shows conclusively that progress must still be slow. Or, if other considerations were requisite to show that perpetual peace and perfect international order cannot be secured, immediately, we have only to point to the fact that even among peoples possessing the same general national government the order of affairs is frequently disturbed after centuries of established regulations. If this be true, how long must it require to effect a complete and perfect establishment of international order—a permanent peaceful regulation of the intercourse of distinct, independent, and, in many instances, unfriendly nations, in view of the fact that no general political international organization has yet been even initiated or officially inaugurated!

Sect. 7. But even if the abolition of international warfare or the perfection of international sentiment cannot be immediately brought about, there may be certain things which are necessary to be done now as a step in the progress of development, and without which the ultimate end may not be so soon accomplished as otherwise. It will be observed that the international idea is different from the state, or national, or confederate idea. The idea of the state or nation is that of a community of individuals united under a political organization for mutual benefit and protection and for the maintenance of order. There are thus three elements in the composition of every state or nation, no matter what may be the form of government—the element of positive assistance, the element of defensive assistance, and the element of liberty. I say the "element of liberty," because in every form of government the preservation of order involves a certain kind and degree of liberty for the subject. The confederacy is a political organization in which all these elements appear, but not in the same proportion. A union of states under a federal or confederate government involves little of the element of positive assistance —this element is only contingent. States under a federal government seldom require any actual aid in the accomplishment of the purposes of the state. A confederacy involves considerable of the element of protection or defensive assistance. Thus the federal or general government is often called upon to defend its parts from outside aggression or invasion. It may be said that the leading idea of a confederacy is that of mutual protection, the states forming the federal union preferring to be left alone in the regulation of their own internal affairs. A confederacy implies also, to some extent, the preservation of order in the states composing it, and particularly the regulation of the intercourse of the states.

Sect. 8. But the international idea is quite different from either the national or confederate idea. There is in pure international organization none of the positive element of assistance, none of the negative element of protection. There

is simply a regulation of the intercourse of nations, involving the element of international liberty, the preservation of international order. The true international organization is not intended to preserve order and secure the administration of laws in the nations which compose that organization; it is not intended to arrange or dictate the form of government which any of the united powers shall have; it is not intended to promulgate or propagate any peculiarly national plan or interest which any of the constituent powers may have; it is not intended to defend any of its members from the attacks of powers foreign to the organization. The international organization is, therefore, simply negatively-regulative; and it is evident that there is a genuine distinction between a state, a national, or a federal government, and an international political organization.

Sect. 9. One great difficulty in approaching this subject of international organization lies in an exaggerated and erroneous supposition of what it involves, and of the changes in the relations of nations which it implies. There is no error which is more nearly fatal to the progress of international sentiment and organization than that which most eminent publicists seem to have fallen into—the error of supposing that the international organization is analogous and equivalent to the federal organization. For by thus presenting an end too complex, an organization too close and general, public attention is diverted from the real possibilities, and statesmen become discouraged with the prospect. The world is usually told that the nations are expected to form a league, or confederacy, if they form any international organization at all; thus overlooking the true international organization, and presenting a false alternative. Again, it is usually impressed upon the public mind that all wars cannot now be prevented, and that, consequently, it is neither possible or expedient to secure the codification of international law, and the adoption of a code by the nations. The alternative here presented is that of absolute and perpetual peace combined with international organization, or occasional

war and no international organization; and this alternative proceeds upon the hypothesis that a state of war or liability to war between nations is absolutely inconsistent with any international organization.

Sect. 10. If this supposition were true, it would indeed have much to do with the whole subject of international codification and arbitration. For if no international organization can be maintained with the existence of a state of actual or possible war between two or more of the members of the organization, then admitting that the period of perpetual peace has not arrived—as all must admit—brings us to the conclusion that the period of international organization, so far as it is involved in international codification, has not arrived. If the most simple plan of international organization which can be devised cannot be adopted by any considerable number of nations, or if being adopted, it cannot endure, in consequence of the actual or contingent existence of war, then the proposition that the period of international codification has not arrived is convincingly demonstrated. But it is by no means clear how far codification and its accompaniment, arbitration, imply international organization. Scientific codification would not imply or necessarily require such organization. Political codification would imply such organization to some degree. The nature of the organization necessary to a political codification of international law and the possibility of the existence of such organization without a state of perpetual peace, will appear in the subsequent discussion. It is sufficient to say now, that we have the materials for a rudimentary international organization or political codification of international law, in the rules already laid down in the elementary works upon the subject, in the various treaties between nations, in the writings and sayings of eminent publicists who voice the international opinion of mankind, and in the decisions of prize courts and the general custom of nations in their diplomatic intercourse.

Sect. 11. The authority of all scientific works on inter-

national law, and even of treaties, is but a moral sanction. This moral sanction consists principally in that international sentiment to which I have referred. But the moral sanction is stronger and more effectual when the obligation imposed is expressed in the form of a treaty. Indeed, the whole policy of nations with respect to each other in very recent times, has been in favour of recognizing no international obligation unless expressed in the form of treaties. The indefiniteness of what is denominated the "common law of nations," and the vagueness of theorctical "international justice," contrasted with the force and clearness and adequacy of treaties, has led to the general adoption of the treaty-mode of fixing the obligations of nations in respect to each other. It remains only to secure a general and complete treaty among nations upon all practicable points embodying the rules of their intercourse, and we have a simple international organization—a primary code. That such a system of obligations would prevent all wars, no one expects; but if its formation and permanence are possible, it will undoubtedly diminish both the number of, and tendency to, wars. What possible mode more effectual in creating international opinion, and strengthening the moral sanction, could be adopted? Such a code would possess, of itself, greater moral weight than any mere scientific or unofficial compilation or codification. It would create a general impression of obedience and feeling of reciprocity; and the habitual reference to its principles, and submission to decisions and decrees under it, would naturally abate the war ardour. The greater and more complicated the process of adjusting international difficulties, the further will such adjustment be removed from the domain of simple physical force, the more will the moral and intellectual element become prominent. Both sides of a disputed point having been looked at by both parties to the controversy, the emotional and patriotic element will subside, or become subordinated to the national judgment and moral sense. The general submission of international disputes to decision under

a political code, serves to suspend, for a time, action upon the controverted points, and gives opportunity for passion to cool and reason to assert itself. A code would strengthen the habit, among nations, of negotiating, and weaken the habit of fighting.

Sect. 12. But it is said that there is not a sufficiently powerful international sentiment to secure any united action on the part of the great majority of the leading powers of Christendom; that nations will for a long time to come prefer to settle their differences as they arise, without committing themselves to any definite plan beforehand; that it is impossible to bring nations to bind themselves by any system of rules which human prevision is capable of devising. This may be true in some sense—it is true, undoubtedly, if the objection relates to a complete codification of international law and a perfect complex international organization. But the fact of nations entering into treaties like that of Paris in 1856, shows that they are getting ready for a more extended and general expression of their mutual obligations in the form of treaties. The Congress at Paris issued a declaration in the following language:—"The Plenipotentiaries do not hesitate to express, in the name of their Governments, the wish that States between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power." This declaration was accepted by a large number of Governments. Such an international endorsement of the principle and practice of arbitration is enough of itself to show that the civilized world is about ready for adhesion to a general plan of settlement of international disputes by a peaceful tribunal. In July, 1873, the English House of Commons addressed the British Queen "praying that she would be graciously pleased to instruct her principal Secretary of Foreign Affairs to enter into communication with foreign Powers, with a view to the further improvement of international law, and the establishment of a general and per-

manent system of international arbitration." This is quite decisive as to the attitude of Great Britain in the matter. The conferences at Brussels and Ghent, in 1873, of distinguished publicists representing the leading nations of Europe and America, is quite conclusive as to the general unofficial sentiment of those nations upon the question of preparing some kind of a code.

Sect. 13. Although an attempt to induce contending powers to resort to arbitration has sometimes failed, yet in many cases it has been grandly successful. Arbitration in one form or another is not new. It was sometimes resorted to by the ancient Greeks; and important matters were referred to arbitration in Europe, during the thirteenth, fifteenth, and seventeenth centuries. The most conspicuous example in the present century, and perhaps the most significant of all examples of arbitration, was that concerning the "Alabama" (and other) claims, in which Great Britain and the United States of America were parties. There are few, if any, instances where the decision of the arbitrators has been disregarded by either party—such is the immense moral force attending such decisions.

Sect. 14. An examination of the condition of international sentiment and international custom seems to show that the nations are prepared for some kind and degree of organization. This international organization must consist in the political enactment of an international code. Any other organization like a confederacy, as I have shown, would be inconsistent with the international idea. But even a code of laws must not be too minute or complex. The immediate formation of a complete code is both inexpedient and impossible. In the discussion in which I shall engage in the subsequent articles, I propose to show the best kind of a code it is now possible or expedient to form, and the best method of constituting an international assembly for the purpose of framing such a code. In so doing the following canons have been adopted as governing in the selection of every part of the scheme of codification :—

1. That no sudden revolutions or great organic changes be attempted.

2. That the views and interests of all the nations likely to become parties to the code be considered.

3. That difficulties and objections, and the various plans heretofore presented, be considered.

4. That the probability that a measure would be generally adopted by the nations be deemed controlling.

It is unnecessary to remark at length upon the soundness of these canons. The first canon is necessitated by the immense inertia which nations possess in international matters. They cannot be induced or compelled to act with rapidity and with great innovation. The second canon is necessitated by the fact that nations will not enter into a scheme not calculated to meet their own views and promote their own interests. It will not do to take simply an English or French view of codification, or provide in the code for the interests alone of Russia or Germany, of Brazil or the United States of America. There must be an endeavour to compromise views and interests, so far as possible, and strike a "happy medium." The third canon is essential to an enlightened and thorough treatment of the subject of codification. The fourth is necessary because any scheme, however noble or excellent in itself, which would not be approved by a large number of powers, must be rejected as untimely and politically useless. Wherever I have not made the application of these rules apparent in the subsequent articles, I have carried on the process of applying each in its proper place, enthymematically. It is believed that a fair and uniform application of these canons will result in producing a plan of codification which cannot fail to meet general approval.

ARTICLE II.

The Limits of Codification.

Sect. 15. Before considering the manner in which an international assembly should be constituted for the purpose of codifying public international law, it will be expedient to consider, in a general way, what kind of code such an assembly would be called upon to frame. Thus, if the codifiers are to make a revision of public international law, and a reduction of the principles of that law, so far as it has been partially or pretty-well settled, to a codified form—in other words, if the codification is to be a simple summary of international legal principles gathered from the treaties of nations, the elementary works of authors and the decisions of Prize Courts, it is evident that the assembly might be constituted in a very easy manner. Any self-constituted body of publicists could do this. The "Association for the Reform and Codification of the Law of Nations," recently founded in Europe, would be admirably adapted for such work. The objects of this association are declared to be to formulate the general principles of the science of international law, as well as the rules which result from it, and to spread the knowledge of it; also to give its aid to any serious attempt at gradual and progressive codification. If the codification is intended to be scientific only, whether it be a simple formulation of the principles of international law, *as generally accepted*, or whether it be a formulation of the principles of that law, *as it ought to be*, it could be prepared by such an institution as that just mentioned.

Sect. 16. But if the codification is to be political, and is to be ratified or publicly acknowledged and approved by a number of governments, then the governments should have something to say about the constitution of the assembly which prepares their code. Again, if the codification is to be political it will be requisite for the governments to understand about what kind of a code is to be framed, or upon what principles

the codification is to proceed in order to know what kind of representatives to appoint to the assembly, and how much power to invest them with. It is quite certain that in a matter of such extended and grave importance as the codification of public international law the nations will not submit the prepartion of a code to plenipotentiaries without, at least, the reservation of the privilege of ratifying it or not. It may be doubted, also, even by the most sanguine, whether any considerable number of nations are willing to commit themselves in a solemn manner to an entire body of definite rules of inter-action—whether they are willing to enter into a complete codification of all the law of their public intercourse. It becomes necessary, therefore, in order to determine the character and constitution of the assembly or congress whose duty it shall be to codify public international law, to decide first, in a general way, what are the limits of codification.

Sect. 17. The purely scientific codification of public international law is exceedingly desirable, both on account of the obscurity of international legal science and on account of the weight and force of such a body of laws when presented in any well-defined and systematic form. But the scientific codification of this law, in its best form, is, in some respects, little better than the law as it now is. If it be a codification of the law as it now is, or is deemed to be, it is an advance only in definiteness. If it be a codification of the law as it ought to be, in the estimation of the codifiers, it may not be at all acceptable to the nations. In any event, the scientific codification of public international law, while it might be a splendid system of theoretical rules, and might have great weight in arousing international opinion, and indirectly, upon governmental action, would nevertheless be but an expression of opinion on the part of an association of intelligent and benevolent persons. It does not seem that this would be a sufficient advance, in a practical aspect, upon the present condition of public international law. Admitting that in matters of international intercourse, elementary writers and

private codifiers have great influence, it must not be forgotten that the force of public rules, privately and unofficially laid down, remains in a state of potentiality before an official, public and governmental recognition of those rules. If a rule laid down by an elementary writer happens to have been already approved, or to be subsequently approved, it is potent as being a law. If, on the other hand, the rule is rejected it then ceases to be even potential.

Sect. 18. If, with all the general principles embodied in treaties and international treatises, we have now no public international law, strictly speaking—no general system of laws to which the nations have committed themselves, or by which they consider themselves bound, how would we have any the more an "International Law" if any number of private, influential, learned and able persons should form themselves into an assembly or congress, and *codify* the rules of international intercourse? Desirable as this might be, in a scientific aspect, and indirectly in a political aspect, yet, as I have heretofore indicated, I do not consider that such a codification is all that ought to be attempted, or all that is attainable. It is believed that a political codification, if it does not involve too much, is now among the attainable things in international life. There is a decided political dissatisfaction with "International Law" so-called, as it now is. The several powers of Christendom especially, are desirous of forming some more definite and obligatory system of intercourse than that which exists in the general consciousness, or is approved by the occasional-general consent—something, also, more comprehensive than has hitherto been embodied in treaties and declarations.

Sect. 19. It has been supposed that insular and peninsular countries, commercial countries, were more desirous of having a definite international arrangement than inland and agricultural or manufacturing countries; but the commerce of the nations is now so extensive and general, and the industrial pursuits so diversified, distributed, numerous, and interdepen-

dent, that the great majority of nations are equally interested in the establishment of definite rules of intercourse, and so far as that will go, in the preservation of international order and the abolition of warfare. It is true that among continental and adjacent powers the egoistic feeling is more apt to break out in jealous and aggressive forms towards the neighbouring powers, and war is more liable to occur among adjacent nations than among nations not adjacent. But, judging from the attention which the subject of codification has received in Europe, it would appear that the continental nations are quite as favourable to some international organization as the insular nations. Besides, it must be observed that the history of the world shows a decided tendency towards organization among adjacent powers, even in cases where organization among non-adjacent powers would not be conceived of. And it seems quite clear that many of the nations, irrespective of geographical position, would willingly and speedily arrange for the formulation of the principles regulating their intercourse, if they were assured that it could be done at all satisfactorily. But it does not appear probable that the nations would submit to formulation the whole law of their intercourse; for that would involve a task too great to be attempted at once—a task requiring decades, and even centuries, to accomplish. All that can be done in a political way, at present, is the codification of a few of the plainest and most general principles of international law. To this codification the solemn approval of many nations would probably be secured; and this would constitute the basis for a gradual codification of the whole law of public international intercourse.

Sect. 20. But a political codification of international law, as has been observed, implies a certain kind and degree of organization. It may imply the existence of a tribunal to interpret and apply the provisions of the code. And this brings us to the subject of arbitration, which has attracted so much public and official consideration of late. A tribunal for

the adjudication of public international law might be established without the general codification of substantive international law. Such a tribunal might declare the principles of international law, and apply them, and interpret and apply the provisions of treaties. A general official tribunal of this kind would be productive of great international good. The adjudications of the tribunal would form an uncodified international law, or would furnish materials, in the course of time, for an admirable code. But, however desirable uniform and permanent arbitration may be, of itself, it is not practicable without some sort of codification. In fact, the institution of a Tribunal of Arbitration or High Court of Judicature would require, *pro tanto*, a codification of international law, that is, judicative international law. The jurisdiction of the tribunal or court, the appointment of its officers, the mode of bringing international disputes before it, the procedure, the mode of pronouncing and executing its decrees and judgments, would all have to be embodied in a code of judicative and executive law.

Sect. 21. The establishment, in many states, of tribunals for the adjudication of alien claims, is a codification of private judicative and administrative international law, although these tribunals administer only the unwritten private international law. Still the statute or written law of the constitution, jurisdiction and powers of these courts of alien claims, is different in the various states which have instituted such courts; and, as a consequence, the constitution and operation of these courts are not so satisfactory as if they were provided for by a uniform code of private international law, instead of by independent and dissimilar national or state statutes. A court of alien claims has been established in favour of foreign citizens in Prussia, Hanover, Bavaria, the Hanseatic Provinces, Hamburg, France, Spain, Belgium, and Italy. The United States of America has hitherto provided for the claims of foreign citizens (in the few cases in which they have been provided for) by special commissions, as the Mexican Commis-

sion and the British Commission. But there is a movement in progress in the United States of America for the establishment of a court of alien claims. The Khedive of Egypt, as is well known, is bringing to perfection an entire code of private international law. By such means private international law will be vastly improved; and, of course, by the establishment of a tribunal of arbitration, or a court of judicature, public international law would become better defined and settled.

Sect. 21A. If the choice were between codification without arbitration, and arbitration without codification, I should not hesitate to accept the latter. But if we attempt to erect a general tribunal for the adjudication of public international law, it will be found desirable also to declare what questions shall come within the jurisdiction of the tribunal. And if we declare what questions are to be submitted for arbitration or adjudication, we must also declare in some way the substantive rules by which the parties under the jurisdiction of the tribunal are to be governed. This is true, for the reason that all questions cannot now be submitted to arbitration. We cannot bring the nations to a present agreement to submit all possible differences to an international tribunal. The codification, in respect to substantive law, *might* be a general provision that nations should submit whatever questions they could agree upon to the tribunal, to be decided in accordance with rules which the tribunal might lay down, or upon which the parties might agree. But I do not propose to raise the technical point that all arbitration must, of necessity, be voluntary. That may be theoretically true; for the term arbitration, as ordinarily used, involves the element of voluntary submission. But there is no real obstacle in the way of any number of nations agreeing, by a general treaty or code, to submit a certain kind and number of questions, as they may arise, to a fixed international tribunal, for settlement. In such case the voluntary element is antecedent, and the volition, instead of being occasional, is concentrated in one

solemn act of establishing a permanent tribunal of arbitration.

Sect. 22. But laying aside this technical objection, which has no substantial foundation, it is true that all questions cannot now be submitted to arbitration. Professor Montague, in a letter to the London *Times*, said: "With respect to arbitration, the opinion which I hold—and in which Dr. Bluntschli agreed with me—is that it is an expedient of the highest value for terminating international controversies; but it is not applicable to all cases or under all circumstances." An attempt at providing positively for the submission of all questions to arbitration, would be an extreme which is prohibited by the canons which I have laid down. Nor do I think it advisable to leave the choice of what questions shall be submitted for arbitration entirely to the parties, as occasion may require. That would be creating a tribunal which might never have any causes to hear and decide; and such a general and volitional provision of substantive law as that mentioned in the preceding section would therefore be quite insufficient. We need a code of substantive law somewhat more extensive than that. We need a code which shall define certain questions as suitable to be submitted to arbitration, and which shall define certain rules as governing in the conduct of the associated powers and in the settlement of disputes. In other words, the condition of international sentiment is such as to demand a partial substantive code of public international law, as well as a judicative and an executive code. And if the codification is prepared in accordance with the canons laid down, the extent and kind of international organization involved will not be inconsistent either with the international idea or international sentiment.

Sect. 23. In closing this article, I wish to speak again of the moral sanction—an element which I shall recur to more than once, inasmuch as it is important to understand what effect the proposed codification is going to have upon this moral sanction. It is believed that a partial codification will

strengthen the moral sanction, whereas a complete codification, by attempting impossibilities, would weaken the moral sanction. It is also believed that a political code would be far more effective, even though partial, than a scientific code, though complete. A political code changes the location, so to speak, of the moral sanction from the side of substantive law to that of executive law. Under such a code, the moral sanction will not be exerted in respect to whether there *is* any law, or if any, in respect to *what* the law is, but in respect to whether it *shall be obeyed.* This removes the volitional element from the region of the immediate to that of the remote, and renders it less and less likely that the moral sanction will be unheeded or ineffectual. For, having consented that there shall be a fixed law and a tribunal for applying that law, and having presented a case for settlement according to that law, a nation assumes an increased responsibility in respect to rendering obedience to the decrees of the tribunal. Thus, the moral sanction becomes cumulative. And if it is possible to obtain the official consent and agreement of the nations to any codification, the period of the abolition of warfare and of the reign of perpetual peace will have been hastened a century. Having considered, in a general way, the limits of codification, it is now proposed to consider more specifically the method of constituting an Assembly for the Codification of Public International Law, and then, in succession, the Leading Principles to be applied in the codification of the different branches of public international law—substantive, judicative, and executive.

ARTICLE III.

The Method of Constituting an International Assembly of Codification.

Sect. 24. The partial political codification of public international law as a basis for the ultimate complete political

codification of that law demands an assembly which shall represent the views of all the nations immediately concerned. A body of codifiers who should represent only the monarchical governments or only the aristocratic or democratic governments would not answer the purposes or needs of the nations, in general. The codification is to be a matter as universal as possible; and the representatives who ought to be chosen to frame the code should be persons representing most prominently the most diverse governments and the most diverse interests in their respective governments. In no other way can due weight be given to the various elements that are to be combined and harmonised under the reign of one universal system of laws.

Sect. 25. In considering, then, the character of the assembly which is to be called for the purpose of codifying the rules of international intercourse the second canon of the discussion is one of prime importance. It will not be advisable to select all the representatives from that class who, from their habits of life and education and their public duties, stand before the world as professors of international law, or scientific legists. It is true that Justinian created a college of scientific legists who prepared an admirable summary of legal principles. The code which they produced has been of incalculable benefit to the municipal jurisprudence of continental Europe, and has not been without great influence upon the British and American law. And this mode of compiling a system of laws seems always to have been received with favour on the continent of Europe—especially among the Romantic nations. Among them to the present day the work of scientific legists, whether individual or collective, has been regarded with the utmost consideration, and text-books have always been of high authority. There is, indeed, much to be gained in a scientific and theoretical way by the submission of the formulation of legal principles to persons of theoretical and scientific legal culture, as distinguished from persons of dramatic and practical culture—to professors of law as distinguished from judges and practitioners of law. The books of the continental publicists

are full of beautiful and symmetrical systems of law. Their theoretical and scientific value cannot well be over-estimated. But many of the most excellent and beautiful theories are found inapplicable when transferred to the region of the dramatic or practical, and so it happens that many of the legal works of the law writers of continental Europe are not of as much practical as of theoretical value. They present magnificent legal ideals, but are often deficient in respect to practical rules.

Sect. 26. Incontestibly the influence of scientific legal works, in all departments of jurisprudence, is of the most noble and elevating character, not only upon the profession which studies and uses them, but upon the general legal consciousness of the age. But something different is demanded in a supremely practical system of laws, such as an international code, which must, in any event, be a compromise between the highest and lowest ideals of the nations which are expected to come under its reign. It must be remembered that in political codification the choice is between no political code and one which is as good as can be had. The method of creating law, so to speak, in England and America, is quite different from that on the continent of Europe. There, adjudication takes the place of codification to a great extent; although codification is rapidly advancing in the United States of America. But, scientific codification, which is the ideal method of creating law, is not in much favour among English-speaking peoples. Thus, in England there are few text-writers, and the legal system of that country is due almost entirely to the courts. Lately, statutory law, as occasion may require, has been on the increase in England. But the principles of English law are scattered through the reports of the decisions of the courts, and have never been extensively collated. The great sources of English law, the sources which obtain authority and receive veneration, are the adjudications. The English people would, therefore, naturally turn away from any system of laws made by a body of purely scientific legists; just as the continental people would turn away from a system constructed

by the occasional decisions and decrees of courts. The Continental method would be too ideal and symmetrical for the English; the English method would be too dramatic and irregular for the Continentalists.

Sect. 27. In America there is a sort of medium between the Continental and English methods, with a leaning towards the English; thus, while the treatises of law authors are regarded as "authority" of some kind there is a disposition not to accept anything as law which has not been adjudicated. But in the absence of an adjudication upon a given point, the opinion of a text writer has a *quasi* authority, which is often determinative. The codification which has been effectuated in America is simply a compilation and formulation of the rules which are scattered through the reports. It is not a construction or creation of law from independent materials and in accordance with the history and demands of American institutions. So, it is probable that a body of purely scientific codifiers would fail to suit any of the English-speaking peoples, in this matter of codifying public international law. It is also probable, on the other hand, that the codified work of a body of strict lawyers or judges would be deemed too dramatic and not sufficiently ideal by the people of continental Europe. In order, therefore, to secure a code which will reconcile all these differences, and consist of a modification of all these diverse methods, it will be requisite to appoint a number of men from each nation representing the various elements in the creation of law. If we are to have a codification which is to be political and practicable, we must secure a body of representatives who shall by the composition of the equal forces of their diverse views, produce a resultant code which shall be tolerably acceptable to all. For this purpose let there be appointed three persons from each nation: one lawyer or judge, one scholar or publicist, one statesman or diplomat—at any rate, let the persons appointed be of dissimilar legal culture and conscience, representative of dissimilar elements in international sentiment.

Sect. 28. I next pass to the consideration of the question

as to how the members of the assembly or congress shall be appointed. It has been before remarked that the nations would be more inclined to accept a code, when formulated, if it were prepared by persons of their own appointing. The work of the official representatives of the governments would be more apt to receive favour and immediate adoption than the work of any assembly of self-constituted or unofficial representatives. This consideration, it seems to me, effectually disposes of the plan of privately or unofficially calling a congress of publicists interested in the codification of public international law, and then submitting the results of the labours of such a congress to the governments for adoption. The proper method seems to be somewhat as follows:—Let an unofficial body like the "Association for the Reform and Codification of the Law of Nations" issue circulars to a number of governments requesting them to appoint or have appointed three representatives such as may be deemed suitable, to convene at some central point for the purpose of framing a code of public international law, such as shall be deemed proper. Or, let an official representative of the people of any nation procure his government, through the proper channel, to invite other nations to join it in appointing (three) representatives to convene in an international congress, at a convenient place, for the codification of public international law, the appointees to possess certain requisite qualifications (advisably a statesman, a jurist, and a scholar), and the codification to be within certain general limits (to be stated in the invitation or agreed upon by the nations) and to consist of a few general principles of substantive law together with provisions for a tribunal of arbitration or judicature and rules for the execution of decrees. The congress thus called would be of an official character, and whatever it might do would command universal attention and procure political action. It cannot well be denied that if a number of nations would consent to such an arrangement of preliminary union the action of the assembly, limited as proposed, would be approved by the governments represented.

And it is not too much to hope that if one prominent power could be induced to take the initiative, many powers would enter into the arrangement for an international assembly of codification. What appears to me most desirable of all things is that the movement for the codification of public international law shall be, as soon as possible, placed within the domain of diplomatic or governmental action.

Sect. 29. Not that scientific, private and philanthropic action shall cease. It is desirable that political and diplomatic action shall go on simultaneously and continuously with scientific and unofficial action; and no one would suggest that immediately on the assembling of the congress of official codifiers, all purely scientific action shall be suspended, on the part of the associations for the improvement of international law, or on the part of the various international legists. These are instrumentalities which must concur with official instrumentalities in the progress toward the perfection of international law and the period of perpetual peace. Then, too, it must be remembered that the proposed political codification is only partial and preparative or initiative; that much, and nearly all, will remain to be done after the political official assembly now proposed has accomplished its immediate and proper work; and that private scientific work, whether collective or individual, possesses many high ideals to which political codification cannot now attain, but which are of incalculable influence in the elevation of international sentiment. But so soon as we get into the domain of the diplomatic and the political, in this matter of international codification, something substantial, practical and organic is at once begun. And whatever may be said of the effect of international opinion in an advanced and perfected state, in respect to being adequate to the procurement of a just regulation of public international intercourse and a reign of perpetual peace, it never can be thus adequate unless through some organization. The power of international sentiment, in respect to inter-government action, must be expressed or embodied in some political or diplomatic

form before it can be utilized or rendered effectual in the consummation of the desired ends.

Sect. 30. When a congress consisting of members of the character proposed and appointed in the manner proposed shall have convened, the manner of its organization and the rules governing its proceedings will not be difficult to fix. The congressional rules governing all inter-government assemblies would be applicable to the assembly of codification. The great difficulty in the constitution of an assembly of codification will have been overcome when the appointment of the members is officially secured. In comparison with such a congress, the Congress of Vienna, of Aix-la-Chapelle, of Paris, would sink into unimportance. An international assembly for the codification of public international law would be in fact the most imposing and important political body ever convened during the history of the world. And, doubtless, its members would feel the dignity and gravity of their position and of the work required of them, and put forth every endeavour to accomplish their task in a manner commensurate with the grand and universal principles involved, the immense interests concerned, and the noble and exalted international sentiment to be embodied and expressed. The moral aspect of such an assembly would be magnificent also, for much of its work would be the formulation of the great humanitarian principles which the church inculcates. And while it was the province of the great church councils to give laws to the ecclesiastical world, it would be the province of the international assembly to give laws to the political world.

Sect. 31. In closing this article it may be well to state that the assembly of codification ought always to bear in mind the individual element and tendency in national organic life. It will be the province of the codifiers to avoid the errors of a too-inflexible system of laws, as well as of a system which comprehends within it matters which are national and peculiar and not universal and international. It will be their province to formulate only those rules and principles upon which there

is general international accord, and to which a general approval on the part of the powers which they represent can be secured. That this task is as difficult as it is responsible and important the international assembly of codification will readily discover.

ARTICLE IV.

Substantive Public International Law.

Sect. 32. In considering how much of the substantive branch of public international law is now to be codified, or what principles shall be embodied in the partial codification proposed, it will be expedient, first, to determine what matters ought not to be affected by the deliberations of the international assembly. As a fundamental rule, it may be laid down that the internal and organic laws of the nations shall not be disturbed; for no nation is willing to submit its own form of government or institutions to modification by an international congress, no matter what may be the resultant advantage. An international codification which should attempt to regulate the form of government or the extent of territory (except within very general limits, or upon general conditions) would signally fail of ratification. This was one of the enormous defects in the *Grand Dessein* of Henry IV. of France, whose plan called for a union of the nations or states of Continental Europe, of which union the leading features were, that there should be six hereditary monarchies, five elective ones, and four republics, and that great changes should be made in the political map of Europe. The effectuation of such a scheme is, of course, an impossibility. The nations never have been, and are not now ready, to adopt any plan of union or organisation which will prevent freedom

of change in respect to form of government or in respect to extent of territory.

Sect. 33. The powers do not desire or propose to enter into any agreement by which a republican form of government, or one in which there shall be a legislative or popular branch, shall supersede more absolute forms of government. Such a plan was suggested by Emanuel Kant, in his essay entitled, "Zum Ewigen Frieden;" but it is radically defective. Neither do the nations propose that, by previous agreement, the limits of certain nations shall hereafter be prevented from extending. However desirable that might be by certain nations which, though of small area, are nevertheless in danger of being absorbed entirely by neighbouring powers of great extent and influence, yet, on the whole, it is better and far more practicable to allow the limits of territory to regulate themselves under a few humane and equitable conditions, such as the prohibition of force in the acquirement of territory by one power from another. But there is a vast difference between prohibiting entirely the acquirement of territory and regulating the acquirement of territory. It may be proper, therefore, to provide in the code that territory may be acquired by one nation from another in any manner except by violence or fraud. This would be placing the utmost limit, which I deem expedient, upon the acquirement of territory by one nation from another.

Sect. 34. With respect to the extent to which an international assembly should interfere with national affairs, it may also be said that the codification should not involve the immediate or compulsory disarmament of the associated powers. The condition of the world is such that each nation considers its own safety predominant, and the egoistic sentiment in national life is still so powerful, compared with the altruistic sentiment, that each nation prefers to keep its own preservation as much within itself as possible. Nor is it possible to persuade the nations that a universal disarmament is the best mode of preventing encroachment by one

nation upon another. The last stage of good faith among nations would be essential to the consummation of complete or proximate disarmament. It requires an amount and kind of international sentiment which has never yet been developed to obtain the consent of the nations to placing their national life in the good faith of each other—in the probability that a code requiring disarmament would be universally and permanently obeyed. The feeling of most nations upon this point is doubtless akin to that which General Von Moltke recently expressed in a speech before the Reichstag, in which he took occasion to say that Germany must rely upon a continuance of her powerful armed force for her future preservation.

Sect. 35. The truth is, that complete disarmament cannot be secured, at present, by international agreement. Disarmament is, strictly speaking, a matter of purely national expediency, a matter which is, in itself, entirely outside of the domain of international legal science. It is no concern of the nations, in their international relations, how many armed men, or how much munition and ordnance, or how many ships of war any nation may have and maintain, so long as international intercourse is not interrupted, and international rights are not infringed. A gradual and voluntary disarmament will undoubtedly be effected by the nations themselves when, by the inauguration of an international code and the corresponding augmentation of international sentiment, they can be induced to trust their preservation more and more to their own inherent peaceful strength and the good faith and good will of others. Besides, it must be remembered that some nations will not and cannot be induced to come within the provisions of the proposed code; and if the code should require disarmament among the associated powers, what security would any, or all of them, have against aggression and violence from powers not associated and not disarmed, whose military strength would be amply sufficient to overcome the combined disarmed powers. Suppose a contingent force to be supported by the associated

powers for the purpose of repelling foreign invasion. But this would require a large, burdensome, mixed force—too large to be intrusted to the generalship or care of a single commander, and demanding military commanders and men and supplies from the various associated powers. And no matter in what form or manner this contingent should be sustained, it would necessitate a kind and degree of international organization which is too close and federative. The international organization which I propose, and which alone I believe to be possible, at present, is an organization neither offensive nor defensive (for that implies confederation), but an organization which simply regulates intercourse among associated nations, and preserves, to that extent, international order. Any other kind or degree of organization is not international but federal, and transcends the practicable and the expedient, because it is too complex and close in the present condition of international sentiment. For two sufficient reasons, then, disarmament should not be provided for in the code—for the reason that it would be an interference with internal, domestic, and purely national matters, and for the reason that it would necessitate an organization federal, instead of international. For these reasons Bentham's plan of international union, which contemplated a reduction of military establishments, and all similar plans, are believed to be inexpedient and impracticable.

Sect. 36. And this leads us to consider whether the code should provide for any positive alliance whatever among the powers associated. But the answer to the suggestion is not difficult if we admit that the international idea is not a federal one, and does not imply an organization for mutual assistance. And while the code might not prohibit alliances between any of the associated nations, it should not provide for any alliances. The code ought not to prohibit any alliance or treaty among the associated powers not inconsistent with the code.

Sect. 37. The question whether the code ought to regulate the attitude of the associated powers toward outsiders is one of considerable importance. As a general principle, it may be

stated that outsiders ought to receive neither benefit nor injury from the existence of the code; that the relations of powers not parties to the code with reference to powers parties to the code, ought to remain unchanged. Yet for the sake of promoting peace, as generally as possible, it might be suggested that the code should contain a provision that no associated power should begin a war with an outside power, except upon such conditions as a war would be permissible between parties to the code. But it is easy to see that this would violate the principle just enunciated, by giving an advantage to an outsider; for while the outside power would be unrestricted, except by the vague unwritten public international law, as to its aggressive movements, the inside or associated power would be restricted by what is conceded to be a more definite and humane system of laws. I do not see how it would be either expedient or practicable to compel an associated power to submit a dispute with an unassociated power to the associated tribunal of arbitration, to ascertain whether it could rightfully go to war. And it appears to be better to leave the attitude of the associated powers, with respect to outsiders, to regulate itself; relying upon the advance of international sentiment alone, for the regulation of such intercourse and for the settlement of difficulties arising therefrom. As a consequence, alliances among the associated powers, as against unassociated powers, ought not to be prohibited.

Sect. 38. From the foregoing review of the substantive principles of the code, it will be deduced that in so far as they relate to forms of government—the acquirement of territory, alliances among the associated powers, the relations of powers parties to the code with reference to powers not parties—the code should be negative in its essence. The code should provide, for example, that no nation should be prohibited from having or maintaining its own form of government, or regulating its own internal affairs, or maintaining its own armies and navies; that no nation should be prohibited from acquiring the territory of another, except by violence or fraud; that no nation

should be restricted in its relations with nations not parties to the code; that no two or more nations should be prohibited from entering into any alliance, treaty, or agreement, not inconsistent with the provisions of the code. And indeed, so far as possible, both the form and substance of the code should be negative, inasmuch as international organization or government is negatively-regulative. If it were possible to express all the provisions of the code negatively, we need not be limited to a partial codification in form, although it would be partial in fact. To provide, in general terms, for everything which shall *not* be done by the associated powers, would, of course, be formally a complete codification. The negative form is well adapted to constitutional or substantive provisions, and is particularly adapted to the expression of a system of laws which is to consist of a few plain, simple principles and rules, embodying the negatively-regulative international idea.

Sect. 39. But it will be found necessary to embody some affirmative, or more positive, rules of public international law in the code. The code should, of course, define the governmental organizations which may become parties to it. If it designates such organizations as "nations," or "powers," it ought to define the kind of sovereignty which is implied by those terms. Evidently the code will not contemplate a regulation of the intercourse of any but independent sovereignties—political or governmental organizations which owe no allegiance to any higher political power. The test of the sovereignty which is intended to come within the contemplation of the code is the independence of that sovereignty. Thus, the several states of Germany, or the states composing the United States of America, or the colonial possessions of Russia, or of Great Britain, would not be "Nations" or "Powers" within the meaning of the code; but Germany, the United States of America, Russia, Great Britain, would be "Nations" or "Powers" within the meaning of the code.

Sect. 40. The code ought to prescribe rules for the acquisition of undiscovered territory or territory recently discovered,

but the title to which is in controversy or doubt. Matters of this kind are not of such vital importance to the nations as such, as that they would not be willing to submit them to international regulation. In addition to this, the code ought to prescribe rules for the settlement of disputed boundary lines, for this is a matter of a strictly international character. With respect to the erection of new nations, caused by revolution or otherwise, the code ought to formulate a few general rules, such as that when such new nation or sovereignty has received the formal recognition of a certain number of independent "powers" it shall be regarded as a "Nation" or "Power" competent to become a member of the Association of Powers. If such new power or government has been formally a part of the territory of one of the associated powers, the code ought to provide when such associated power should renounce its claim of sovereignty over the new power, which would be, of course, when the new power had obtained the formal recognition of the required number of nations, either associated or unassociated. This would be accompanied with the following proviso:—That the recognition of the belligerency of an insurrectionary province does not involve the recognition of its independence; and if the parent government continues to endeavour to suppress the insurrection, or to subdue the rebellious, though belligerent, province, and is successful, in a military point of view, then the recognition of belligerency ceases to be of any avail.

Sect. 41. As to the test of the independence of any new sovereignty it does not seem practicable for the code to institute any other than that which is here suggested, and which has been the test among nations hitherto. A test of absolute or intrinsic independence would be impossible of application, and the test of a number of formal recognitions seems to be all that is at present desirable. From the definition of a "Nation" or "Power" it will be seen that there is and can be no higher political sovereignty than that which each nation possesses under the code. This suggests the formal declaration of the equality of the associated powers, but this is immaterial.

Each "Nation" or "Power" would be required to see that the provisions of the code were carried out in all places and by all persons under its sovereignty.

Sect. 42. With respect to the jurisdiction of nations over the high seas and over their own ships it would be well to establish a few rules. This is a matter on which the nations could be brought to a general agreement. The distance out to sea to which a nation's territory shall be deemed to extend should be the subject of another rule, inasmuch as the high seas are the common property of the nations, and it is highly proper that the nations should know where their common property ends. There should also be a few rules in regard to piracy. And as a fundamental principle it may be stated that where matters are sufficiently international, public and common, that there can be secured a general official agreement upon them, then the code should provide a rule or set of rules; but where much depends upon geographical position or national peculiarity the matter ought to be left for regulation by the nations most concerned, by treaty or otherwise.

Sect. 43. The matter of international warfare is within the province of codification, for there are many rules upon this momentous subject upon which a majority of the nations can be brought to an agreement. Thus, the rights and duties of neutrals ought to be the subject of a considerable body of rules. As it is not at all probable that wars will entirely cease among the powers which adopt the code, and as there may be cases in which parties to the code may even rightfully go to war so far as the code is concerned, it will be necessary and proper to provide rules for such cases. But it will not be expedient, as I have before indicated, to make the rules of warfare and neutrality, contained in the code, applicable to a case of war between unassociated powers (for that would be futile), or between an associated and an unassociated power (for that would be unfair). The rules of warfare and neutrality should apply to cases where a war is permissible, under the code, between associated powers. The rules applicable in a case

where a party to the code wrongfully begins a war upon another party to the code *might* be different; but this point will be treated in the article on Executive Law.

Sect. 44. It may happen that the belligerency of a province in rebellion against an associated power may be recognised by a number of nations (as was mentioned in sect. 40), in which case it would be well for the code to provide a rule somewhat as follows:—That when a rebellious province shall obtain a certain number of formal recognitions of belligerency by independent powers, such province shall be regarded as a Belligerent, and a "Power" *pro tanto*, and if the belligerent thus recognised shall adopt the code and be governed thereby in the prosecution of the war, then the parent-government shall be deemed belligerent and bound by the same rules; that if the rebellion is subdued and the refractory province is reduced to submission, then it shall cease to be recognised by the code, in any manner; that if, on the other hand, the rebellious province becomes an independent and formally-recognised nation, then the code becomes binding on it as a new member of the association of powers. It is obvious that where two or more associated powers go to war in regard to matters outside of the jurisdiction of the code, then there should be the same system of neutral and belligerent rules as govern when war is permissible under the code. Certain it is, that war in regard to matters outside of the jurisdiction of the code will not be prohibited by the code, and practically such war will be permitted by it. The rules embodied in the code ought, of course, to specify certain rights of belligerents, the character and efficiency of a blockade, and the like. As to neutrals, the code ought to provide, among other things, what is contraband of war, the degree of diligence a neutral must exercise in preventing contraband of war, or war ships of either of the belligerents from being in its ports. It ought to provide, perhaps, that no person under neutral sovereignty shall take part in a war loan, or in exporting material of war, to either belligerent.

Sect. 45. There are many matters which on account of

national diversity in respect to them, ought not to come within the province of present codification; these matters are not so fundamental as those mentioned in the first part of this article as being fit topics for negatively-regulative provisions in the code. Among the topics which would be better provided for by special treaties between the powers directly concerned are the extradition of criminals, domicil, fisheries, all regulations for mutual convenience and reciprocity, all diplomatic intercourse, although some or all of these topics will, doubtless, be the subject of sufficient unanimity for international codification in the future. Hence, the present code may well be silent upon these topics. And with this brief outline of what it seems expedient to include in the substantive branch of the code I pass on to the judicative department of public international law.

ARTICLE V.

Judicative Public International Law.

Sect. 46. The department of judicative public international law is the most positive and constructive of the departments. It is, in some respects, the most important; for it is considered the international *desideratum* of the age that there should be a tribunal for the settlement of international controversies. And the judicative branch of the code being of a constructive character, should be prepared with a care and judgment quite equal to that required in the substantive branch. Judicative law includes the constitution and jurisdiction of a tribunal for the settlement of claims and controversies and the mode of procedure in the cases which shall come before the tribunal. The constitution of a tribunal of an international and public character is, obviously, of more importance than the rules of procedure. The latter must, necessarily, be special and technical, and can be easily determined; and whatever mode of

procedure may be adopted would be likely to give general satisfaction.

Sect. 47. In this article the discussion will be confined to the constitution and jurisdiction of the public international tribunal of judicature or arbitration, and the most general rules of procedure in bringing matters before the tribunal for settlement. It is, perhaps, well to observe that the adjudication or arbitration should be performed by judges of a truly international character. Not that the judges should belong to the ruling classes, or that the tribunal should consist of princes and noblemen or any titled personages—that will be a matter to be left to the choice of the appointing powers, as we shall hereafter see—but it is essential to the dignity and influence of the tribunal that it be composed of persons of an international and judicial character. Apart from the character of the judges, it is desirable that the tribunal should possess variability or elasticity combined with permanence and cohesion. How to devise a scheme of judicature which shall effect this object is our present inquiry. If the tribunal should be composed of a number of judges appointed by each of the associated powers to hold office during life, and all the judges to sit upon each case, the tribunal would be rather unwieldy, so to speak, and there would not be sufficient variability of judicial talent and international representation. The permanence of the tribunal would, of course, be assured under such a system, and the results of the decisions would be a great body of international interpretive law. But I am inclined to the view that a medium must be sought between a tribunal consisting of judges appointed for life, all of whom shall sit in every cause, and a tribunal of an opposite nature, consisting of judges appointed as occasion may require to sit only in the cause for which they are appointed. This medium would be something like this: a tribunal consisting of a number of judges appointed for a long period (for life), one or more from each power, only a portion of whom shall sit in any single cause. By this means the number of judges may be large enough to represent effectually the different interests in the various

associated powers; and by a selection from this number the acting court or tribunal may be sufficiently small to be efficient. If the selection is given to the contending powers, as it should be, each cause will be heard and decided by judges especially representing the parties to the controversy. As to the location of the tribunal for the hearing of any controversy I would suggest that it be left to the choice of the judges, with the limitation that the tribunal shall not have its sittings at any place within the territory of either of the contending parties, nor outside of the territory of the association of powers.

Sect. 48. In respect to the jurisdiction of the tribunal various schemes may be devised. It has been proposed by some writers to erect a tribunal which shall have power to settle all disputes between nations. This was the scheme of Emery de la Croix, in his "Nouveau Cynée;" of Castel de St. Pierre, in his "Projet de La Paix;" and also the plan of Bentham. But I have already considered the impracticability of submitting all questions to an international tribunal for settlement in the present state of international sentiment; and, under a partial political codification, such as that here proposed, there is no necessity or propriety for a tribunal having a jurisdiction any more extensive than the extent of the substantive rules. The tribunal which I propose is not a common-law tribunal, but a statutory one, a tribunal whose jurisdiction should be defined. For the purpose, however, of indirectly including the unwritten public international law in the code of judicative law, it may be expedient to establish, or recommend an additional tribunal. This additional tribunal might be termed a tribunal of arbitration, and have jurisdiction over all questions which the parties in controversy should agree to submit to it. From this tribunal appeals might lie, in causes involving an interpretation of the code, to the principal tribunal, which might be denominated the high tribunal of international judicature, and have, not only appellate, but original jurisdiction in matters arising under the code. Thus, let it be provided that there shall be a high tribunal of public international judicature, having power to hear and determine

questions arising under the code, and having both an appellate and an original jurisdiction in respect to such questions; also that there shall be tribunal of public international arbitration, having its constitution or existence in the option of the contending powers, and its jurisdiction co-extensive with the option of the contending powers; that from this tribunal appeals shall lie to the high tribunal in causes involving the construction or interpretation of the code—that in all other cases, or in cases where the parties so agree, the decision of the tribunal of arbitration shall be final. By such a scheme the code would encourage, though not require, adjudication or arbitration upon the unwritten as well as written law.

Sect. 49. The whole scheme of judicative law will then be susceptible of the following arrangement: The High Tribunal of Public International Judicature shall consist of at least as many judges as there are powers, and, under some conditions of the association of powers, of more judges than powers. If there are fifteen or more powers, there shall be one judge appointed from each power; if less than fifteen and more than six powers, there shall be two judges appointed from each power; if less than seven powers, there shall be four judges appointed from each power. The hearing of a cause or question and its decision shall be by nine judges—four to be chosen from all the judges by each party, and the ninth, by the eight so chosen, from the remaining judges. If at any time, by the accession of new powers to the association of powers, the number of judges shall become too great, one (or more) shall be retired by each of the powers. Or if, at any time, the number of judges shall become too small, by the withdrawal of powers from the association, each power shall appoint an additional number. In the event of the death of a judge, the power by which he was appointed would, of course, be required to fill the vacancy. The original jurisdiction of the High Tribunal of Public International Judicature shall be limited to the interpretation of the code, and the administration of the substantive law embodied therein.

Sect. 50. Where the settlement of a controverted point, or claim under the code is desired by either of the contending powers, such power may give notice to the adverse power that it intends to bring the point or claim before the High Tribunal of Public International Judicature for adjudication; and such notice shall require the adverse power to join the complaining power in selecting the judges and preparing the cause for adjudication, according to the rules of the code. And *it is recommended* that wherever the powers contending can agree upon the submission of a disputed point or claim, of whatever nature, to arbitration, that they submit their cause to a tribunal of public international arbitration, such tribunal to be constituted in any manner in which the contending powers may agree. The tribunal of arbitration shall give its decision upon all questions which may be submitted to it, and shall decide upon principles and rules not inconsistent with the code. In cases where the interpretation of the code is involved, the decision of the tribunal of arbitration shall not be final, unless the parties so agree beforehand; but an appeal in such cases may be taken to the High Tribunal of Judicature, which shall have power to hear and decide such appeal.

Sect. 51. On examining this scheme, it will be seen that it allows the utmost latitude to the powers, consistent with any kind of permanence and stability. It will be seen also that while all questions *may* be submitted for settlement to an appropriate public international tribunal under this scheme, yet the code only *requires* that questions involving an interpretation and application of the principles of the codified law shall be submitted for settlement. This scheme contemplates both adjudication and arbitration; but it must be observed that the adjudication proposed is, essentially, arbitration, the voluntary element in the submission of causes to adjudication being concentrated in the act of adopting the code. And while the High Tribunal of Public International Judicature may not be nominally, a tribunal of arbitration, but a court of adjudication, it nevertheless differs from the ordinary, or municipal, court of

adjudication, in which the involuntary element is predominant, and the voluntary element, in the submission of causes, is remote and obscure. The similarity of the proposed High Tribunal of Judicature to a tribunal of arbitration will be more apparent when we come to consider the method of executing its decrees, and the consequences of a violation of the provisions of the code. It will only be expedient to state now that any tribunal which has not an accessory physical power sufficient to procure the execution of its decrees, must be, essentially, a tribunal of arbitration, no matter what it may be denominated.

Sect. 52. The results flowing from the existence of the judicative branch of the code are too obvious to require extended mention. Under the custom of submitting questions for settlement to a tribunal constituted in either of the ways proposed, public international law will grow and become settled, in an authoritative manner. Not only will the practice of submitting disputes among nations to peaceful settlement become more fixed and more universal, but the decisions of the tribunals will constitute an important auxiliary in the progress of codification in the future.

ARTICLE VI.

Executive Public International Law.

Sect. 53. In the consideration of the executive branch of public international law difficulties will arise which, by many, may seem fatal to the scheme of political codification. In the proper codification of this branch of international law, no doubt, lies the possible continuance of the proposed international organization. The whole subject of the use of physical force in executing the decrees of the tribunal or the provisions of the code is suggested by the mere mention of "executive" international law. If we have a code of substantive law, and a corresponding code of judicative law, what will be the use

and effect of the provisions of the code and the decrees of the tribunal if there is no substantial means of enforcing them? And can there be any means of enforcing such provisions and such decrees, other than moral means? Again, if there arise any violation and infraction of the code, and a forcible resistance to the execution of a decree, why would not this, of itself, dissolve the association of powers, and put an end to international organization. These are among the grave and vital questions which are forced upon the consideration of us who propose a scheme of political codification.

Sect. 54. Perhaps I cannot better express these objections and difficulties, which many believe to be insurmountable, than by giving the language of Professor Woolsey, in an essay on "International Arbitration." He says:—"A moral sanction is not enough when such tribunals have announced a decree which is displeasing either to one or to both of the contesting parties. Force must in the present state of mankind form a part of every such plan. When nations can consent to accept decisions adverse to themselves with meekness, it is not probable that they will fall out with one another, nor, indeed, will arbitration then be necessary. But in the application of force there are great difficulties. Shall there be an army of the confederation of states composing the tribunals? This seems to be impracticable. Shall the execution of a decree be committed to certain nations, after the pattern of the military execution of the late German confederation? If such nations were remote, this would be a slow and costly work, performed grudgingly, and in the fear of not being remunerated. If they were near to the party cast in the suit, they would feel animosities or partialities not favourable to the strict execution of justice. Shall there be a contingent on some equitable terms to be called for from all the allies? But these nations, if remote, or even if near, and yet without special interest in the affair, would be slow in moving their contingents to the place of war. Let the experiences of the German Emperors in the old empire, when they made their Italian expeditions, or called for help

against the Turks, bear witness to the truth of what we say." We might easily admit the most of these objections without endangering the scheme of political codification; but the chief fault to be found with Professor Woolsey's line of objection is in the hasty assumption that force must form a part of every plan of international arbitration. Nevertheless, force has been a part of nearly every plan which has heretofore been presented on either side of the Atlantic. It was the plan of Emery de la Croix "to pursue with arms those who should offer opposition." Under the scheme of Castel de St. Pierre, the allies were to be empowered to reduce a refractory power to submission; by D. D. Field's very recent plan substantially the same thing is provided. Bentham, however, proposed "putting the refractory state under the ban of Europe," and suggested a contingent, to be provided by the allies; while Kant's plan contained no provision for the exercise of force in compelling obedience to the articles of union.

Sect. 55. But the scheme of a partial political codification such as I propose was evidently not in the mind of the objectors; and an independent examination of the whole subject of providing for a violation of the code, will be necessitated. This examination reveals the fact that there may be three general modes of dealing with a refractory power: By a combined or contingent force of arms; by expulsion from the association of powers; or by leaving it to the power adjudged to be aggrieved to take its own justification or redress. With respect to codification, the first and second of these modes would be positive, the third negative; and, since the kind of international regulation, which is implied in the true international idea, is negative, this is *pro tanto* an objection against the exercise of any force of arms, or the expulsion of a power from the association, under any circumstances. Under the partial political codification proposed, the nations are not *confederated*, or *allied*, in the true sense of those terms; they are simply *related* to each other by something more definite and solemn than the unwritten international law. The nations solemnly

agree, under the present scheme, that such and such shall be the rules of their intercourse, and such and such shall be the nature and constitution of the tribunal which shall settle the differences arising under the rules agreed upon; and they solemnly bind themselves to abide by the rules and the decrees. And this is all there is of the codification, or international organization proposed. It is not at all probable that a voluntary disobedience of the provisions of the code, as interpreted by the tribunal, would be within the contemplation of the powers adopting the code, any more than the parties to an ordinary treaty contemplate a voluntary breach of it. That would be bad faith.

Sect. 56. Theoretically speaking, then, the scheme here proposed admits of no provisions for the execution of the codified law, or the decrees of the tribunal, other than formal directions. Looking at the subject in this light, it would seem like a want of confidence in themselves, or like bad faith, for the associated nations to make any provisions for the voluntary breach of their solemn contract and treaty. But leaving this standpoint, let us see whether the application of physical force, or the expulsion of a nation from the association, is practicable or expedient. In the first place, it may be observed that the nations are not now willing to enter into an agreement or association by which they shall place themselves individually, in a given case, under the collective or combined power of the other associated nations. On the other hand, the nations, although interested in the preservation of international order, are not sufficiently interested as to be willing to enter into an arrangement by which they assume to preserve that order, by force of arms, if necessary. Such an international organization would be too close and burdensome for the nations. If there were any provisions at all for the exercise of physical force in the execution of the provisions of the code, it would necessitate an organization neither practicable nor expedient, and would precipitate the nations beyond the line of a truly *international* organization and into a confederacy.

Sect. 57. With respect to the provision that a nation, or nations, disregarding the code or the decrees of the tribunal should be expelled from the association, it may be said that but little good would be accomplished by such a proceeding. It would not atone for the infraction or disobedience; it would not execute the judgment of the tribunal or secure an injured power its rights. In fact, for all practical purposes, a power wishing to evade the decrees of the tribunal or the provisions of the code would be better off outside than inside the association, and would, probably, voluntarily withdraw. Besides, there is no reason why a nation disobeying the code should be in any different condition after the disobedience, as to the other nations, from what a party to an ordinary treaty would be in, as to the other party, after a breach of the treaty. When a treaty is broken, the nations treating do not, on that account, thenceforth refuse to maintain any intercourse or relations with each other. They may go to war, and attempt to settle their difficulty in that way; but they ultimately begin to treat again, and perhaps renew the very same treaty which existed before, and out of which the dispute arose. This is done from the necessities of the case, and in the hope that a breach may not again occur, or that a more satisfactory result may be reached in the future application of the terms of the treaty. Expulsion from the association, besides being ineffectual to procure redress or to change the essential relations of nations, would be against the very fundamental idea of the proposed codification, which is to procure the consent of the nations to uniform laws, a habit of submitting differences to arbitration, and a corresponding augmentation of international sentiment. The execution of the penalty of expulsion would retard the accomplishment of these objects.

Sect. 58. If it be provided that on failure of any member of the association to give satisfaction to another member, according to the decree of the tribunal, in a case submitted, then the member holding the judgment or decree shall be allowed to execute its own judgment by force, if necessary,

this would be simply a permissive provision. In such a case it might be further provided, that the rules of the code in regard to the duty of neutrals might be suspended as to the aggrieved party and retained as to the offending party; so that, for example, the persons belonging to a neutral nation might be allowed to make war loans, or export war material to the aggrieved party, but would not be allowed so to do with reference to the offending party. This would give the nation executing its decree a decided advantage.

Sect. 59. Again, it might be provided that any associated nation having a claim against any other associated nation should first ascertain whether it is a case under the jurisdiction of the high tribunal, by formally submitting it to the high tribunal, before attempting to seek its redress by arms. Thus, all cases would come before the high tribunal, either for adjudication or non-adjudication. The advantage of this provision would be to suspend, for a time, the use of force by the party considering itself aggrieved, and would give opportunity, in all cases, for passion to cool and a more enlightened and liberal view to be taken of the difficulty on both sides. Under the partial codification proposed, some such provision may be necessary in order to ascertain with anything like judicial certainty, whether a given difficulty or claim is really within the contemplation of the code. Then, if the high tribunal should decide the case not to be within its jurisdiction, the party aggrieved, or feeling aggrieved, would be allowed to seek its redress by force of arms. But it might be further provided, that if any nation should go to war without first ascertaining by judicial process, whether its case is within the jurisdiction of the high tribunal, then the rules as to neutrals should be retained as to such aggressive nation, and suspended as to the defending nation. The object of such a provision would be to discourage a resort to war and encourage a peaceful settlement.

Sect. 60. Within these limits the penal and executive provisions of the code ought to be confined. And it is my opinion, that the embodiment of any penal provisions whatever in the

code will be of doubtful expediency and propriety. A friend to whom I submitted the question as to the use of physical force, or the expulsion of a power from the association in case of disobedience or infraction, immediately answered that some such provision was necessary to the success of the code. But, on reflection, my friend came to the same conclusion as myself—that such provisions are inexpedient and are a violation of the sentiment of international courtesy and propriety, in view of the fact that all the substantive laws, and all the decrees (in prospective) of the tribunal, will be solemnly agreed to beforehand by the nations concerned; and that as the code will be but a treaty on a large scale, there should be no provisions made for its deliberate violation. Nevertheless, I am inclined to the view that a provision, embodying the rule that any nation feeling itself aggrieved shall not go to war before ascertaining whether its claim is within the jurisdiction of the high tribunal, is expedient; and also a provision that any nation may execute a decree of the high tribunal obtained in its favour.

Sect. 61. With this view of the subject, recurs the question: Is the international organization proposed capable of perpetuation under the conditions prescribed? And also the question: What is the use of the code proposed? In giving an answer to the first of these questions, I will propound a counter-question, that is, What effect can a state of possible or actual war have upon the code? In a state of possible or contingent war the provisions of the code would be potent and the decrees of the tribunal would be effectual, subject only to the condition that such provisions and decrees could be disregarded if any nation should so choose. But this would not affect the existence of the code in the least. In a state of actual war, as where a power begins a war without first submitting its claim formally to the high tribunal, or where a difficulty has been decided not within the jurisdiction of the high tribunal and a tribunal of arbitration has not been resorted to, or has failed to give satisfaction, or where a power has taken into its own hands the enforcement of

a decree made in its favour—in a case of actual war from any cause the existence of the code would not be annihilated as to the warring nations, but only suspended or ignored temporarily; while as to the nations not warring it would remain in full force. In this respect the code would stand on the same basis as the unwritten international law now stands; and the existence of the code or proposed international organization is such that it could not be annihilated by a state of war. Indeed, the only way to annihilate the existence of the proposed code is by a formal withdrawal of all the powers from the association. If one power withdraws then the code is inoperative as to it, but operative as to the others.

Sect. 62. These observations, it is believed, dispose of the objections so frequently raised against the existence of any kind of international organisation in the present condition of the world. In answer to the question as to what is the use of the proposed code without any means of enforcing its provisions, the kindred question may be asked, What is the use of any treaties at all among nations? One use of a treaty is to prescribe some more definite rules of inter-action among nations than are to be found in the so-called "unwritten international law." This is, of itself, sufficient reason for treaties, and equally so, for the proposed codification. Now, treaties may be broken and disregarded, and physically and practically ignored, but no one, on that account, declares that treaties are useless or inexpedient. If the fact that international agreements could not be enforced by physical power were conclusive against them, we should never have any such agreements.

Sect. 63. But the great superiority of treaties over the unwritten law, and of political codes over scientific codes is in the *accumulation of the moral sanction*, which takes place under the former method of creating law. And, indeed, it would seem that a code so judiciously and wisely framed, and containing so little objectionable matter, as to procure the solemn approval of many of the leading nations, would be so beneficent and agreeable in its application as to occasion few or no instances

of violation, disobedience, or infraction, and then only in cases of such misunderstanding as would not jeopardise the general veneration for the codified law. As has been before stated, the moral sanction, under a political code, is transferred from the region of the establishment of law to the region of the execution of law. And the merit of the partial political codification proposed is in procuring an accumulation of the moral sanction; in obtaining the general international positive consent to a uniform system of laws, however simple or incomplete; in procuring the positive sanction of the principle of arbitration and a general practice of submitting difficulties to settlement by an international tribunal established by the nations themselves; and in the corresponding and consequent increase and improvement of international sentiment, which can be so adequately effected by no system of purely scientific or unofficial codification which can be devised.

Sect. 64. From the foregoing discussion it will readily be deduced that the codification of the executive branch of public international law should consist of the formulation of a few rules appropriate to the administration of decrees to which no opposition is expected, and should provide few, if any, penal provisions for a violation of the provisions of the code, by the parties to it. As a general principle, the code must be considered as the separate treaty of each nation with each of the other nations associated, for a violation of the provisions of which no nation is responsible but the nation committing the violation, and in the procurement of redress for which violation no nation is expected to engage but the nation aggrieved. This is, in general terms, what is to be the extent of the proposed international organisation; and the codification of the executive branch of public international law should proceed upon the principle laid down:

ARTICLE VII.

Conclusion and Summary.

Sect. 65. In conformity with the principles evolved in the preceding articles, it will not be difficult to settle some miscellaneous points which may be deemed within the province of codification. First among these points may be considered the eligibility of the nations to membership in the international organization. Shall the organization be closed to nations of a certain degree of civilization, and open to nations of a higher or different degree of civilization? Shall it be closed to nations of a certain religion, and open to nations of a different religion? Shall the codification be for the benefit of Christendom alone, or for the benefit of all nations who may wish to embrace the plan proposed? In answering these questions, it is well to observe that in the establishment of a criterion, such as would be necessitated by the limitations on the eligibility of nations suggested by such questions, great difficulties would necessarily arise. It requires no discussion to show that it would be extremely difficult to obtain a good criterion of the degree of civilization essential to membership, or even a good definition of civilization itself. And it is by no means clear what would be the criterion in respect to religious creed, or form of worship. If it were attempted to incorporate into the code any recognition of any form of religion, or any limitation as to the religious sentiment of the nations fit to become parties to it—if, for example, the code should declare that only "Christian" nations could avail themselves of its provisions, then a grave difficulty would be encountered in ascertaining what is a "Christian" nation under the code.

Sect. 66. After an examination of this subject in all its bearings, I do not think it would be either practicable or

expedient to place any limit upon the number or character of the nations which may avail themselves of the provisions of the code, or which may become members of the association, except so far as the membership may be limited by the political criterion already prescribed, the criterion that any nation which is independent is eligible to membership in the international association. Indeed, the main object of the code is to procure the recognition of a uniform and benevolent system of laws among all nations which can be persuaded to adopt it.

Sect. 67. Nor do I think it consistent with the international idea to prohibit any nation from becoming a party to the code. The rules which are to be embodied in the code will necessarily be such as all nations entering the association are willing to observe in their intercourse with all other nations which will observe the same rules. The reciprocity of the obligation assumed by the parties to the code renders it immaterial to any nation what other nations may voluntarily assume the obligation. And if it be urged that some nations would thus become parties to the code, against which other nations, already parties, may have ill feelings and hostile intentions, it may be replied that the code is only partial, and that upon the points codified, each associated nation expects to be guided by the rules in the code, whenever it can be likewise dealt with by any other nations.

Sect. 68. From the foregoing it will appear that all nations which will adopt the code, may do so, whether they have been represented in the assembly of Codification or not. Some of the nations represented in the assembly may not deem the code sufficiently acceptable to meet their solemn approval; while other nations not represented in the assembly may wish to adopt the code. Thus, on the whole, it is better to leave the adoption of the code unlimited, except by the condition of absolute sovereignty in the nations proposing to adopt it. The code should simply require that any "Nation" (corresponding to the definition) may become a party to it in the manner

in which treaties or international compacts are ratified or adopted by such nation. In respect to the withdrawal of a nation from the association of nations, I do not consider it necessary to make any rule. As has been observed, the nations becoming parties to the code, or members of the association, enter their solemn consent to be bound by the code, without limit as to time. It would, at least, be out of taste to provide a rule that any nation disobeying the code, or a decree of the tribunal, shall be deemed to have withdrawn from the association. Nevertheless, it may be considered expedient, by many, to provide in the code for the withdrawal of a nation by its official notice to that effect, published to the nations, or filed with the High Tribunal of Public International Judicature.

Sect. 69. Another matter of considerable interest to be provided for in the miscellaneous or supplementary branch of the code is the amendment of the code. Since the proposed codification is simply an initiatory one, and is intended only to form a basis for the future complete codification of public international law, and for the perfect application of the principle of arbitration, some provision must be made for the future advancement of these objects. After a beginning has been satisfactorily made in this matter of international codification, it appears quite certain that we shall be then on the high road to success. But a complete realisation of the international idea must be the work of ages—of centuries. The code must, of course, be subject to amendment and enlargement; it must allow a gradual progression corresponding to the growth of international sentiment. But it is impossible to make the alterations and enlargements of the code correspond in time exactly with the growth of international sentiment. The growth of international sentiment may be behind that of the code in some degree, or it may be ahead of that of the code in some degree; but, in order to have the code effectual the growth of international sentiment and the growth of the code should correspond as nearly as possible.

Sect. 70. It would not be well to amend the code at short

intervals, or before the workings of the parts already codified could be tested and reliable *data* obtained from which additional codification could proceed. One, two, three, or even five years would probably be too short a period at the end of which a new assembly should be constituted for the amendment of the code. Probably once in ten years would be as often as the code could be safely amended. And during the intervals the required information as to the state of international sentiment on new topics for codification and upon the expediency and propriety of rules already codified could be obtained. Much aid would be received from the proceedings of scientific and unofficial legists and from the decisions of the tribunals. The proposed code should provide in some manner for the constitution of new assemblies for the amendment of it. It should fix the periods at which such assemblies should be called; or it should provide that when a certain number of the associated powers should officially announce their desire for an amendment of the code, then—at such time—the assembly should be formed. The code should also provide for the submission of amendments for ratification to the associated nations. It should provide that the approval of either two-thirds, or three-fourths, or all of the associated nations should be requisite to the establishment of an amendment. There are obvious reasons why an amendment should be required to be ratified by all of the associated nations before becoming a law of their intercourse. And I am inclined to the view that it would be the best way to provide that no amendment should become a part of the code without the solemn ratification and consent of all the associated powers.

Sect. 71. In all amendments to the code, the effort of the codifiers must be constantly (as in the initiatory codification) not to codify too much; and it is recommended, that in all codification of public international law, the canons which I have laid down as governing in this discussion, be observed, as being as applicable to actual codification as to discussion. And in concluding my observations on the miscellaneous or supplementary branch of public international law, it may be well to

mention the subject of antecedent treaties which may be inconsistent with the code. Of course, in all matters within the purview of the code it would be dominant; but a formal clause would not be out of place, providing that all existing treaties or agreements between the associated nations inconsistent with the code should be null and void. This could be done without infringing upon the rights of any of the parties to the code, inasmuch as the act of adoption would be by the same power which formed the treaty or agreement, thus annulled; and the code, as I have before said, ought not to apply to the relations of associated powers with respect to unassociated powers.

Sect. 72. It now only remains to prepare a summary of the leading principles evolved in the foregoing discussion. It seems to be of prime importance that the nations should understand the kind and degree of codification which is proposed, or the kind and degree of organization into which they are expected to enter, before they will move in the matter. For this purpose let the "Association for the Reform and Codification of the Law of Nations," or other unofficial body of international legists, prepare a communication or manifesto addressed to the various independent Governments; or let some legislator or appropriate official move his Government to call the attention of other Governments to a plan of codification of public international law, contained in a communication or manifesto. Let this communication or manifesto consist of the following scheme, which the author and the promulgators thereof respectfully submit for approval or modification, by any independent Government: *First.* That an international assembly be constituted, consisting of three representatives or ministers from each independent nation of the world (to be appointed on or before a specified time), such representatives to be, advisedly, pre-eminent—one for statesmanship or diplomacy, one for legal or juridical ability, one for general culture;—such assembly to meet at a convenient point on the continent of Europe, namely Paris (or Berlin, or St. Petersburg), as soon after their appointment as convenient, namely, within six months (or

more or less); there and then to frame a code of public international law upon the following leading principles:—*Second* (1). That the code shall consist of a body of rules in the departments of substantive law, judicative law, executive law, and of a body of miscellaneous or supplementary rules.

Sect. 73. *Third.* (2.) That the substantive branch or department of the code, so far as it relates to forms of government, the acquirement of the territory of nations, alliances among the nations associated under the code, the relations of associated nations with reference to nations unassociated, shall be negative, and shall provide that no nation shall be prohibited from maintaining its own form of government, or regulating its own internal affairs, or maintaining its own armies and navies; that no nation shall be prohibited from acquiring the territory of another, except by violence or fraud; that no nation shall be restricted in its relations with nations not parties to the code; that no two or more nations shall be prohibited from entering into or sustaining any alliance, treaty, or agreement not inconsistent with the code. Also that the substantive branch of the code shall provide reasonable and proper rules as to acquisition of undiscovered territory, or territory discovered, but to which the title is in dispute; as to the erection of new sovereignties; as to the public jurisdiction of nations; as to the rights and duties of neutrals and belligerents; and as to all such matters as are sufficiently international, public and common, that there can be secured a general agreement among nations upon them; but no rules shall be made as to such matters as, on account of national diversity, or geographical position, or any peculiarity, ought to be left to the nations directly concerned to settle by special treaty or agreement.

Sect. 74. *Fourth* (3.) That the department of judicative public international law shall provide for the establishment of a permanent high tribunal of public international judicature, to which all questions arising under, or in reference to the code shall be submitted for decision and direction, the judges of the high tribunal to be appointed by the nations parties to the

code. Also that the judicative branch of the code recommend a tribunal of public international arbitration to be erected by the nations having a controversy, as occasion may require, and to which any question in public international law may be submitted for decision and direction; from which decision or direction an appeal to be taken, in a proper case, to the High Tribunal of Public International Judicature.

Fifth. (4.) That the executive branch of the code shall consist of such rules as are necessary for the execution of the decrees or directions of the tribunals, and as are not inconsistent with the general principle, that the code shall be considered as the separate treaty of each nation with each of the other associated nations, for a violation of the provisions of which no nation is responsible but the nation committing the violation, and in the procurement of redress for which violation no nation is expected to engage but the nation aggrieved.

Sixth. (5.) That the miscellaneous or supplementary branch of the code shall consist of provisions as to the eligibility of powers to become members of the Association of Nations; as to the ratification or adoption of the code by the several nations; as to the amendment of the code; and as to such matters as the assembly may deem within the scope of the leading principles herein promulgated, and within the contemplation of the nations by which they are appointed.

Sect. 75. Accompanying this summary there should be statements of the reasons underlying the principles promulgated. The general plan will, doubtless, be improved and modified; but, as I have said, I consider it quite essential that the governments should understand as nearly as possible what the proposed codification is to be, before any official action can be induced in the matter. Still it *may* be found practicable simply to obtain the official appointment of representatives or ministers to an international assembly, with power to exercise their own judgment and sense as to the nature and extent of the codification to be made. In any event, in the privilege of refusing to ratify the code when framed, the nations will find their honourable safeguard.

Sect. 76. The complexity, novelty, and obscurity of the subject of the Codification of Public International Law, and the vastness and diversity of the considerations and interests involved render any scheme of codification necessarily imperfect, and place even its feasibility in doubt. But if this discussion has served to throw the least light upon this vast field of inquiry and deliberation, the expectation of the writer has been realised. The grandeur and beneficence of the results which are likely to flow from even a partial political Codification of Public International Law, and the establishment of a tribunal which shall continuously effectuate the principle of arbitration among nations, constitute an end which is worthy the highest efforts of human intelligence.

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DEDIÉ A SON EXCELLENCE

SEÑOR DON ARTURO DE MARCOARTU.

MÉMOIRE SUR L'ÉTABLISSEMENT

D'UN

TRIBUNAL INTERNATIONAL

ET LA RÉDACTION D'UN

CODE INTERNATIONAL.

No. XIII.

"Le droit est le souverain du monde."

MIRABEAU.

Ceci est une application nouvelle du self-government.

X.

PAR

M. PAUL LACOMBE.

LIVRE PREMIER.

Du tribunal international ou tribunal des arbitres Européens.

I.

Est-il possible, l'Europe étant ce qu'elle est, d'arriver à prévenir, à empêcher toute guerre entre les nations de cette partie du monde ? La proposition, posée dans ces termes, paraît une pure utopie. Mais si l'on dit : est-il possible de rendre la guerre de moins en moins fréquente, et d'arriver, peu à peu avec le temps, avec des siècles, si l'on veut, à son extinction totale, ou à peu près totale, le problème prend un autre aspect ; il semble parfaitement résoluble, au moins pour l'Europe.

Ainsi nous ne portons pas nos espérances, comme quelques-uns, jusqu'au point de penser que la paix universelle se peut établir en une fois et pour toujours par quelque bon arrangement, par quelque machine bien agencée, qu'il s'agirait uniquement de découvrir et d'installer. Rien à notre avis ne peut procurer un semblable résultat. La guerre ne disparaîtra que lentement, par voie de réduction graduelle, comme tous les fléaux invétérés dont les hommes ont, ou ont eu à souffrir.

Mais d'autre part, nous croyons qu'on est plus avancé qu'il ne semble à beaucoup de gens ; nous estimons que des remèdes sont déjà découverts, assez efficaces pour entamer et amoindrir considérablement le mal, et non-seulement ces remèdes ont été découverts, proposés, mais ils ont été employés dans une certaine mesure ; et l'expérience à démontré leur puissance salutaire.

Il a été démontré par l'expérience que des conflits internationaux graves pouvaient être vidés pacifiquement par sentences arbitrales de personnes tierces. L'arbitration est donc ce que j'appelerai un remède acquis.

Et toutefois, l'arbitrage n'a été pratiqué jusqu'ici que dans des conditions défavorables, en ce sens que les parties n'y ont eu recours qu'après l'explosion des conflits ; quelquefois même

sur le point d'en venir aux mains, par conséquent dans le moment même où les passions surexcitées de part et d'autre, laissaient le moins de prise aux inspirations de la sagesse. Le succès de l'arbitrage, dans ces conditions désavantageuses, a été, pour tous les amis de la paix, comme un trait de lumière ; une idée simple et juste s'est produite de toutes parts, c'est qu'il serait bien plus aisé d'obtenir que les nations se lient ensemble, ou du moins de nation à nation, préventivement à tous conflits, et par conséquent dans les moments de calme et de reflexion, par des traités portant en substance que désormais elles termineront leurs différents par voie d'arbitrage, au lieu de recourir aux armes. Cette idée, dis-je, s'est produite de toutes parts ; tous les amis de la paix se sont accordés à la propager ; et le *traité préventif d'arbitrage* est désormais reconnu comme une amélioration importante à la conception première de *l'arbitrage instantane.*

L'arbitrage préventif, (et c'est un fait bien remarquable qui montre combien l'idée a marché vite) a fait une entrée éclatante dans le monde politique, par la proposition de M. Richard au Parlement Anglais. Peut-être, disons-le en passant, M. Richard a-t-il donné à sa proposition une forme trop générale, et partant trop peu précise. Peut-être aurait-il mieux valu qu'il engageât l'Angleterre à conclure un traité préventif d'arbitrage avec une nation déterminée, tout en laissant apercevoir que ce traité devrait être suivi d'autres pareils, avec une série de nations, prises chacune en particulier. Cette manière de procéder, plus graduelle, et n'exigeant chaque fois que le concours de deux volontés, nous paraît être, par les deux raisons ci-dessus, préférable à toute autre plus prompte, mais d'un succès plus difficile.

Après l'arbitrage, après le traité préventif d'arbitrage est venue l'idée de rédiger un code international ; et enfin celle de confier le soin de rédiger ce code à un groupe d'hommes versés dans la science du droit des gens, qui seraient provoqués et autorisés à entreprendre ce grand ouvrage par l'appel concerté des sociétés de la paix, existant actuellement, tant en Europe

qu'en Amérique. La médication de la guerre, si l'on peut s'exprimer ainsi, en est là ; et c'est de là que nous partirons nous-même, dans le présent travail, pour avancer un peu plus loin, s'il est possible.

II.

L'heure a sonné, à notre avis, de réaliser la dernière venue de ces idées ; il faut que le groupe des législateurs internationaux se réunisse, sous peine de voir l'œuvre de la pacification rester désormais stationnaire.

Mais comment cette assemblée sera-t-elle recrutée, comment établie ; et qu'elle besogne aura-t-elle à faire ? Et d'abord, sera-t-elle organisée avec ou sans le concours des gouvernements européens ?

Les rois, les présidents de république, les ministres recherchent par état l'intérêt du peuple auquel ils commandent, sans se préoccuper si ce qui sert ce peuple nuît aux voisins ; c'est leur métier, on pourrait dire que c'est leur devoir. Ils représentent et doivent représenter l'égoïsme national. Il serait malavisé de vouloir leur imposer un autre rôle, celui qu'ils remplissent présentant déjà assez de difficultés. Le soin des intérêts généraux de la race humaine, ou seulement de la république européenne, serait dans un gouvernement particulier une impossibilité, et même une duperie. Il n'y a de ce côté rien à changer ni à détruire ; il y a à créer un corps qui soit l'organe des intérêts généraux des peuples européens, de même que les gouvernements sont les organes des intérêts de chaque peuple en particulier.

De ce que les mêmes hommes ne sauraient remplir convenablement deux fonctions aussi contraires que celle de poursuivre l'avantage privé d'une nation, et celle de subordonner précisément cette poursuite à l'intérêt commun d'un groupe de nations, il suit que non-seulement les agents des gouvernements divers de l'Europe ne doivent pas être appelés à composer en tout ou en principal, ce corps qu'il s'agit de créer ; mais qu'à

judicieusement par er, ce corps doit être soigneusement constitué à part des gouvernements, et maintenu dans une indépendance manifeste à leur égard. C'est une condition absolue pour que le corps soit réellement impartial ; et en tout cas, pour qu'il le paraisse, ce qui n'est guère moins important.

Les gouvernements écartés par cette raison préremptoire, sans parler de beaucoup d'autres, comment le corps en question, que nous appellerons, si vous voulez : LE TRIBUNAL DES ARBITRES EUROPÉENS sera-t-il constitué pour la première fois, et comment recruté par la suite ?

Il est toujours sage de partir de ce qui est, de continuer ce qui a déjà manifesté un commencement d'existence. Certes, le groupe de personnes éminentes, qui s'appela naguère le tribunal arbitral de Genève, a rempli aux yeux du monde entier une mission assez éclatante pour que la réunion des mêmes personnes, dans la même ville, sous le même nom ou sous un nom équivalent, et leur constitution publique en un corps permanent, si elles avaient lieu, devinssent sur le champ des événements européens. A peine ce groupe serait-il réformé, que l'attention des feuilles publiques, l'appui des sociétés de la paix, les vœux de plusieurs milliers d'hommes (et non pas des moins considérables) dans chaque pays, lui seraient acquis. L'opinion publique européenne qui veut, qui désire la paix, sentirait qu'elle a enfin trouvé un centre, un organe, et on peut prédire, sans être un rêveur, que l'on verrait probablement l'opinion publique encouragée, manifester par des mouvements imprévus et nouveaux des tendances qui sont restées jusqu'ici latentes en grande partie, faute de confiance dans le succès.

Mais encore faut-il que les personnes, qui ont composé le tribunal arbitral de Genève veuillent prendre sur elles le rôle d'initiatrices. Elles ne le feront, et ne peuvent convenablement le faire, qu'à l'instigation, à la supplication des sociétés de la paix. C'est donc à celles-ci qu'il appartient d'entrer tout d'abord en jeu. Que toutes les sociétés, tant d'Europe que d'Amérique, se concertent pour faire une démarche auprès des membres de l'ex-tribunal arbitral de Genève, afin de les déterminer à se saisir du

rôle bienfaisant qu'eux seuls peuvent assumer dans les conditions actuelles. Si, par hasard, l'ascendant des sociétés de la paix ne suffisait pas à vaincre les scrupules de délicatesse qui seront à coup sûr mis en avant tout d'abord, les sociétés auraient à provoquer parmi les hommes, que le problème de la paix intéresse, des manifestations en assez grand nombre, ou de qualité telle, que leur poids enlevât enfin les dernières résistances.

D'ailleurs ce qu'on demanderait aux ex-arbitres de Genève (et ce serait un point bon à préciser, parce que leurs scrupules en seraient allégés) ce ne serait pas de former à eux seuls tout le tribunal nouveau ; mais d'en former le premier noyau. Il ne semble pas, en effet, qu'une juridiction de cette importance, puisse se composer de moins de cinquante ou soixante membres. Plusieurs raisons, que nous verrons bientôt, doivent faire adopter un nombre aussi élevé, sinon plus élevé. Ainsi donc, les ex-arbitres seraient chargés de constituer le centre primordial, et d'assembler ensuite autour d'eux les éléments consécutifs, jusqu'à perfection du corps. Autrement dit, ils se compléteraient en choisissant et appelant à eux les hommes marquants dans toute l'Europe et en Amérique par des qualités ou un caractère convenables aux fonctions voulues.

Il ne nous appartient assurément pas de décider quels collègues ces premiers arbitres devront s'adjoindre, ni quel genre de mérite ils rechercheront de préférence dans leurs choix ; mais il est dans notre sujet de dire, sauf correction, quelles conditions paraissent devoir être remplies, en vue de porter aussi haut que possible la dignité du corps, et son action sur l'opinion publique européenne, action qui sera le principal, sinon l'unique levier de sa puissance.

Nous dirons donc, sous le bénéfice de ces réserves, que le corps des arbitres européens nous paraît devoir, dans l'intérêt de son autorité morale, se recruter lui-même. Il ne s'agit pas ici d'un corps représentatif, chargé de manifester les sentiments d'un certain ordre de commettants, il s'agit d'un corps savant et sage, appelé à se mettre au-dessus des intérêts, des préjugés nationaux, des passions populaires, et à juger les débats internationaux

d'après les notions de droit les plus hautes, et les considérations politique les plus étendues. Les sentences de ce tribunal sont destinées à être considérées comme les arrêts même de l'impartialité ou de la prudence. Or, la sagesse, la prudence, le savoir sont choses appréciables seulement à ceux qui possèdent ces qualités à un degré déjà éminent. En second lieu, les hommes faisant déjà partie intégrante de ce grand corps, seront encore les plus intéressés à porter dans l'élection des membres nouveaux l'attention et le scrupule nécessaires; car par de bons choix seulement, l'ascendant moral du corps sera conservé, ascendant indispensable, sans lequel le corps ne serait rien.

Il est à présumer que le tribunal des arbitres se recrutera toujours moitié de jurisconsultes et d'historiens éminents, et moitié d'hommes d'état, ayant fait leurs preuves d'esprit pratique, conciliant; et rentrés dans la vie privée. S'il nous était permis de produire une supposition personnelle, nous dirions que très-probablement cette classe d'hommes y prédominera, et avec justice, car, ainsi que nous le verrons, la plupart des débats internationaux, et les plus graves, sont résolubles non par les règles d'un droit précis, mais par des considérations de politique et d'histoire. L'application de principes rigides dans cet ordre de procès, serait souvent nuisible ; les ménagements, les tempéraments, les compensations, les demi-mesures mêmes, y seront d'un emploi inévitable. Un pareil tribunal serait beaucoup amoindri, si l'esprit juridique y dominait; c'est l'esprit politique qui doit y régner; non pas absolument, mais avec une autorité principale, quoique partagée.

Comme il faut que les membres de notre tribunal aient l'indépendance et la dignité extérieure que la fortune seule confère, il est indispensable qu'ils reçovient un traitement assez élevé. Il y a plus; la publicité, la diffusion des idées par la voie des journaux et des livres devant constituer leur puissance capitale, sinon exclusive, un budget, et même un budget considérable, leur sera nécessaire. Ces traitements, ce budget ne peuvent être procurés tout d'abord, que par les cotisations libres des partisans de l'institution dans tous les pays ; mais il serait bien à

désirer que des donations d'immeubles, des fondations, consistant en domaines, ou en rentes perpétuelles, puissent, au bout d'un temps, relever le tribunal de cet état précaire et lui donner la situation toujours influente d'un corps assis sur la base solide d'une propriété imperdable.

III.

Il semble que dans la pensée de la plupart des hommes qui ont mis en avant l'idée de réunir à nouveau les ex-arbitres de Genève, cette réunion doive avoir uniquement pour objet la confection d'un code du droit des gens. Nous avons déjà fait pressentir que nous ne partagions pas cette opinion. Suivant nous le tribunal des arbitres Européens devrait être essentiellement un tribunal permanent d'arbitres, placé au centre de l'Europe, pour rappeler à tous les gouvernements et à tous les peuples qu'il dépend désormais de leur modération, de leur sagesse que tous les conflits internationaux se terminent pacifiquement.

Nous ne voyons d'ailleurs aucun inconvénient à ce que le même corps qui aura à rendre ses arrêts entre les gouvernements, compose lentement le code où seront consignés les principes, les règles par lesquels le tribunal entend se déterminer. Plusieurs raisons militent en faveur de cette solution; d'abord la complication gratuite et de grave conséquence qu'il y aurait à faire autrement, à se donner la double tâche de créer une assemblée législative internationale, d'une part, et un tribunal international d'autre part. Bornée à la constitution d'un seul corps, l'œuvre sera encore assez difficile et laborieuse. Que le tribunal des arbitres Européens fasse donc comme les magistrats romains; qu'il publie par intervalles à mesure des besoins qu'il sera mieux à même de connaître que personne, à mesure aussi qu'il acquerra de l'expérience, et que la lumière se fera pour lui sur les principes vrais ou sur l'opportunité de leur application, que le tribunal, dis-je, publie des chapitres du code international ou des axiômes juridiques propres à en tenir lieu provisioirement; ce seront pour lui les édits du préteur. Un code ainsi fait, avec

le secours du temps, vaudra mieux qu'un ouvrage fait sans lui, en une fois.

Voyons cependant de quelle manière, dans quelles formes le tribunal arbitral exercera sa première et principale fonction, celle de juger les conflits internationaux.

Nous supposons qu'un certain nombre de nations (sinon toutes) sont liées entre elles par des contrats préventifs d'arbitrage; et qu'un conflit, survenant entre deux de ces nations, est soumis à l'arbitrage du tribunal. Le tribunal sera-t-il saisi de la cause, en son entier, comme cour unique; ou bien, s'étant divisé préalablement en plusieurs chambres, est-ce à l'une de ces chambres qu'il appartiendra de juger, en tant que vouée exclusivement à un certain genre d'affaires. C'est en somme se demander quel sera le régime intérieur du tribunal.

S'il nous était permis d'avoir un avis sur ce sujet, il nous paraîtrait préférable que le tribunal restât un, et sans aucune division. Ses cinquante ou soixante membres offriraient de cette manière aux parties la liberté de choisir parmi eux trois, cinq, dix juges ou plus à leur convenance. Les parties se composeraient ainsi à elles-mêmes leur tribunal, dans le tribunal, soit qu'elles s'accordassent à désigner les membres chargés de juger; soit qu'elles parvinssent au même résultat par une voie détournée, par le moyen de récusations exercées de part et d'autre dans des limites convenues. Les jugements du tribunal garderaient de cette façon le caractère précieux de sentences d'arbitres ou de jurés. Il est en effet d'une grande importance, et il peut être d'une très-grande efficacité, que les parties voient leur sort fixé exclusivement par des personnes à qui elles ont elles-mêmes déféré ce pouvoir; c'est un point très important, je le répète, et qui paraîtra aisément tel, si l'on considére que les décisions de ce tribunal seront d'une nature particulière, destituées qu'elles seront de toute sanction matérielle. On ne saurait trop avoir présent à l'esprit la différence profonde, immense, qu'il y aura par ce fait entre notre tribunal et les juridictions qui existent présentement. Celle-ci émanant dans chaque pays, d'un pouvoir reconnu des particuliers, et en tout cas assez fort pour

faire respecter, et les décisions de ses juges, et sa propre autorité.

Il faut voir dans toute sa portée cette institution du tribunal arbitral. Ce sera la première tentative faite depuis l'origine du monde pour établir, non un pouvoir moral, car les religions, anciennes ou modernes, ont été des pouvoirs de ce genre, mais UN POUVOIR SCIENTIFIQUE ; tentative qui faite avant ce temps-ci aurait été prématurée. Il s'agit de savoir s'il sera donné à la science d'exercer dans l'avenir un ascendant égal à celui que la foi posséda sur l'humanité entière dans le passé. Puisque la tentative est nouvelle, aucune expérience antécédente ne peut nous éclairer, mais en attendant l'expérience, nous avons la connaissance de l'esprit humain, et la déduction pour nous révéler quelles sont les conditions nécessaires à la fin voulue. Il est évident que l'autorité du tribunal arbitrale sera grande d'abord, à proportion que ses membres auront une valeur scientifique plus grande, ce premier point n'a pas besoin de commentaires ; et ensuite à proportion qu'ils manifesteront davantage leur science, ce qui demande quelques brèves explications.

Le tribunal arbitral, sûr de lui-même et du titre légitime de son autorité, ne devra laisser passer aucun des évenements relevant par nature de cette autorité, sans porter sur eux son jugement. Il faut qu'il dise son mot, encore qu'il n'en soit pas requis, sur tous les incidents de la politique européenne, conflits, conduite des guerres, conclusions des traités de paix, etc.; s'expliquant sur tous les sujets de sa compétence que les gouvernements n'aurout pas voulu lui soumettre, avec la liberté, mais aussi avec la modération, la circonspection, avec les ménagements qui ne sauraient faire défaut à des hommes profondément versés dans la connaissance et le maniement des grandes affaires humaines.

IV.

Le tribunal des arbitres Européens constitué, le plus important sans doute reste encore à faire ; il reste que les peuples lui soumettent leurs différents. Les chances pour que cet événement arrive seront très-diverses, selon chaque peuple, et en particulier

selon la nature des gouvernements. Il n'échappe a personne que les gouvernements destinés à abandonner les premiers la voie des armes et à adopter celle de l'arbitrage pour leurs différents sont les gouvernements des nations où le public fait en définitive prevaloir sa volonté, par le moyen d'assemblées législatives souveraines. A cet égard il n'y a pas lieu de distinguer entre les républiques et les royautés constitutionelles ; les deux formes se valent à peu près, au point de vue qui nous occupe. La monarchie absolue est certainement, au même point de vue, une condition très-défavorable (sans vouloir affirmer qu'un roi absolu ne puisse pas montrer autant de sagesse à l'occasion qu'un gouvernement représentatif.) Ce n'est que là où il existe un gouvernement représentatif, que les amis de la paix ont, pour ainsi parler, carrière ouverte. Là, en effet, la marche à suivre est toute tracée. Il s'agira d'abord d'amener le plus grand nombre d'hommes possible à l'idée des traités préventifs d'arbitrage. Dès que les partisans de l'arbitrage formeront un groupe d'une certaine importance, il se trouvera dans le parlement un ou plusieurs députés pour se faire le porte-parole de leurs sentiments, et le nombre de ces derniers croîtra au moins dans la mesure où le nombre des partisans de l'arbitrage augmentera lui-même dans le pays; jusqu'à ce qu'enfin la majorité du parlement soit gagné à la cause; et alors, pour ce pays-là tout sera fini. Nous ne voulons pas dire pour cela que ce cycle sera facilement et rapidement parcouru partout où le gouvernement représentatif existe; mais seulement qu'il n'y a nulle impossibilité à ce qu'il le soit.

La constitution du tribunal des arbitres aurait précisément, quant à la propagation de l'idée de sa paix et de l'arbitrage, une influence extrêmement considérable. Les trois quarts et demi des hommes, par tous pays, veulent la paix ; il leur manque de la croire possible. Beaucoup commenceront à croire, ou du moins à douter de leur scepticisme, rien qu'en voyant à Genève ou ailleurs un groupe d'hommes importants, illustres peut-être, se donnant hautement et publiquement mission de résoudre par la science et par la sagesse les débats internationaux. Sans doute le tribunal des arbitres n'assistera pas d'ailleurs en spectateur

inactif, bien qu'intéressé, à l'évolution nécessaire de l'opinion publique européenne. Cette évolution, il voudra la diriger, la stimuler. Il aura au lieu de sa résidence et ailleurs, des journaux à lui; il enverra des missionnaires; il entretiendra avec les sociétés de la paix, dans tous les pays, une correspondance constante; il sera le moteur suprême, en même temps que le régulateur des efforts tentés de toutes parts en faveur de l'arbitrage.

Il ne nous appartient pas de tracer d'avance au tribunal la conduite qu'il aura à tenir en vue de propager les idées de paix et d'arbitrage; toutefois qu'il nous soit permis de signaler les défauts des systèmes de propagande employés jusqu'ici par les sociétés de la paix, défauts que le tribunal des arbitres voudra assurément corriger.

La propagande des sociétés de la paix à été jusqu'ici une activité, pour ainsi dire instinctive, elle à consisté uniquement à produire, sous forme de livre ou de brochure, les raisons, les arguments qui doivent faire redouter la guerre et désirer la paix; et dans ces derniers temps, les raisons qui pouvaient porter les esprits sceptiques à prendre confiance dans l'efficacité de l'arbitrage. Quand ce dernier pas a été fait, ça a été incontestablement un grand progrès, soit dit en passant, car presque tous les hommes étaient convaincus que la paix est désirable; et fort peu qu'elle était possible. Mais après cela, arguments et raisons, une fois exposés dans un livre ou une brochure, s'en allaient parmi la masse des hommes indifférénts ou incrédules, chercher au hasard l'esprit clairvoyant, le cœur bien intentionné qui devait les adopter et les défendre. Il n'est pas impossible de procéder autrement et d'introduire là, comme ailleurs, l'action méthodique, dirigée par des règles.

Il est certain que parmi les recrues qu'une cause peut faire, toutes ne se valent pas; telle vaut un, tandis que telle autre vaut cent ou mille, et cependant il n'est ni plus difficile ni plus long de convertir un homme considérable et influent, qu'un homme obscur, de faible utilité.

Il est également certain que les arguments les plus effectifs ne sont pas toujours ceux qui sont les meilleurs, absolument parlant;

c'est-à-dire les plus conformes à la raison générale et abstraite; ce sont ordinairement les mieux appropriés au caractère, aux idées de l'homme à qui on s'adresse.

De ces deux règles résulte, à notre avis, l'opportunité, l'utilité, et en même temps la possibilité de ce que nous appellerons la propagande individuelle. Viser un homme en particulier, (bien entendu un de ces hommes qui en valent la peine) lui présenter les raisons qui doivent le convaincre probablement, d'après son caractère connu, c'est un système nouveau à essayer, et dont l'emploi d'ailleurs n'excluerait pas le genre de propagande usité jusqu'ici.

On peut concevoir, ce semble, une ou plusieurs sociétés de la paix prenant la résolution de faire une tentative auprès d'un homme désigné, et chargeant un ou plusieurs de ses membres d'accomplir officiellement et en leur nom cette tentative, selon des instructions précises. Il ne faudrait pas qu'une dignité mal entendue s'opposât à ces sortes de démarches accomplies dans le seul intérêt de la vérité, de l'humanité, et dont l'insuccès, même le plus complet, ne saurait abaisser le caractère. Tout donne à penser qu'elles réussiraient le plus souvent. L'homme qui serait l'objet d'une pareille démarche, honorable pour lui, ne pourrait qu'être favorablement prévenu pour la cause à laquelle on lui proposerait de s'associer. En réalité, dans la plupart des cas, il n'aurait pas porté ses réflexions de ce côté; la démarche de la société serait pour lui une mise en demeure d'avoir a réfléchir sérieusement, et à se décider sur cette question de la paix. La réponse de la personne fût-elle un refus, le résultat serait encore d'une utilité incontestable, en ce qu'un esprit d'élite aurait été amené à approfondir un sujet jusque-là négligé par lui, et à donner de son refus de concours des motifs propres à éclairer la conduite des sociétés de la paix. Elles découvriraient ainsi des préjugés, des répugnances, jusque-là inaperçus, ou mal appréciés, qu'elles vaincraient mieux, quand elles en auraient mesuré la force. Si la prédication de la vérité échoue souvent, c'est faute de n'avoir pas assez bien connu les erreurs adverses. L'ennemi qu'on ignore est inexpugnable.

Ce que nous venons de dire *sur la propagande individuelle* nous dispensera d'expliquer longuement *la propagande de classe*, à laquelle conduisent les mêmes observations.

On croit aisément ce qu'on désire, et on se rend vite à une vérité qui favorise vos intérêts. Certes tout le monde est intéressé au maintien de la paix; la guerre nuît à tout le monde, mais pas également toutefois, et surtout pas d'une manière également sensible. Ceux que la guerre menace dans leur existence comme les jeunes gens, et particulièrement les jeunes gens de la classe agricole, la craignent moins que ceux à qui elle apporte des pertes d'argent immanquables, comme les commerçants, les industriels et les financiers. Cette classe, qui se trouve être en même temps une des plus influentes, en ce qu'elle détient le pouvoir naturel à l'argent, et une des plus aptes par ses habitudes, tant à l'activité privée qu'à l'association, cette classe, disons-nous, devrait être le premier objectif des sociétés de la paix. Mais il serait bon pour cette campagne, que de nouvelles sociétés fussent formées, principalement composées avec des hommes appartenant aux classes mêmes qu'il s'agit d'entraîner. Les semblables savent mieux que personne le secret d'attirer leurs semblables. Ce serait le premier pas fait dans la bonne voie, et le commencement de l'action méthodique.

En somme fonder des sociétés multipliées et diverses dans leurs éléments, quoique tendant au même but, c'est le moyen de diversifier la prédication, d'arriver à mettre en emploi et en usage, *une grande varieté d'arguments et de procédés de conviction: varieté indispensable et dont le défaut est la cause capitale des insuccès éprouvés par les sociétés de la paix.*

Après la classe des négociants, industriels et financiers, il en est d'autres que nous pourrions désigner, comme plus utiles ou plus faciles à conquérir que le commun du public; mais ce serait trop s'étendre sur un point qui n'est après tout qu'un chapitre secondaire de notre sujet.

En résumé, on peut tracer en quelques mots les grandes lignes du plan à suivre. L'intérêt commercial, industriel, (pris dans le sens large du mot) est l'adversaire le plus résolu et le plus

redoutable de la politique guerrière. Rendre les nations plus commerçantes, et surtout pousser *à la division du travail*, dans cet ordre de faits, en sorte que chaque peuple arrive à *dépendre* de tous les autres, d'abord pour l'achat de la plupart des denrées dont il a besoin et qu'il ne produit pas ; en second lieu, pour la vente de ce qu'il produit en excès, c'est le point premier, le précepte capital de l'art d'établir la paix. Le libre échange, et les traités de commerce sont (quoique à l'insu encore de beaucoup d'amis de la paix) dans la relation la plus étroite avec le problème de la paix, et leur influence salutaire est assurément sans égale.

L'intérêt commercial donnera donc la force motrice ; c'est lui qui inclinera la volonté des peuples vers la paix. Après cela, il faudra que la volonté des peuples puisse passer en lois. Ici le gouvernement représentatif se présente comme le seul moyen assuré. Peu importe d'ailleurs que ce soit une monarchie ou une république représentative.

Malheureusement le système représentatif est étranger encore à une partie des nations européennes. Mais ce qui se peut, et ce qu'il faut faire, c'est, avec le levier de l'Europe constitutionelle, de soulever et entraîner l'Europe qui ne l'est pas.

LIVRE DEUXIÈME.

Du Code International. Principes généraux de ce Code.

I.

Venons à présent à la proposition de codifier le droit international. C'est assurément une idée juste et féconde. Il serait d'une haute importance pour la paix que les règles devant servir au jugement des débats internationaux fussent *articulées* et rangées dans un ordre méthodique, comme le sont par exemple dans le code français les règles qui servent à juger les débats des particuliers. Mais il ne faut pas, sur ce chapitre, se laisser prévenir, par des illusions qui pourraient conduire à des mécomptes ou à de fausses démarches. Nous allons voir tout à l'heure les difficultés de l'ouvrage.

Mais d'abord qu'est-ce que le droit international? A prendre le mot au sens rigoureux, le droit international consiste dans l'ensemble des traités actuellement existant entre les nations, et dans l'ensemble des usages pratiqués par elles à l'égard les unes des autres. Ce droit est donc, en partie un *droit écrit*, en partie un *droit coutumier*. Mais à le prendre plus largement, et le programme qui nous est proposé veut que nous le prenions ainsi, ce droit est autre chose; c'est l'ensemble des principes et des règles qui *doivent* régir les relations des nations entre elles, dans un avenir indéterminé plus ou moins proche.

Il s'agit donc ici, non pas d'exposer le droit positif, mais le droit théorique, tel qu'il nous est donné de le concevoir dans l'état actuel de nos connaissances, avec cette pensée, avec cette vue que cet idéal relatif doit entrer peu à peu dans la pratique, se réaliser progressivement, et devenir positif à son tour par le progrès des temps.

II.

Quand on essaye de rédiger en articles les règles auxquelles les relations internationales se doivent soumettre, soit pour être conformes à un type de justice préconçu, soit pour être profitables à l'interêt général de l'espèce humaine (car dans toutes les légis-

lations possibles toutes les règles dérivent, bien ou mal, de ces deux sources, l'intérêt général, la justice); une chose frappe d'abord ; c'est que de toutes les relations que les nations peuvent avoir entre elles, un certain nombre sont aisément codifiables, c'est-à-dire peuvent être prévues, définies à l'avance, et réglées par articles; mais qu'un certain nombre d'autres relations, échappant presque aux prises du législateur, ne sont que très-vaguement définissables et partant ne peuvent tomber que sous le coup d'une règle également vague, ayant l'ampleur mais aussi la généralité peu précise d'un précepte de morale ou d'esthétique.

Voyons d'abord ce qui est, à notre avis, vraiment codifiable. On regléra très-bien par articles, ce nous semble : 1°, les usages de la guerre, ce que des belligérants ont permission de faire l'un contre l'autre ; et ce qu'ils ne doivent pas faire. Ainsi l'emploi de telle arme, de tel engin, sera autorisé; l'emploi de tels autres défendu. Parmi les citoyens des deux peuples en guerre, tels seront, pour ainsi dire, neutralisés, tels autres abandonnés aux sévices de l'ennemi. Telles propriétés seront à respecter, telles autres pourront être ou détruites ou enlevées. Cet ordre de faits est si bien codifiable, qu'on composerait aisément un ou plusieurs chapitres du futur code international avec les prescriptions déjà arrêtées sur ce sujet entre les nations, sauf bien entendu à les modifier plus ou moins dans le sens favorable à l'humanité. 2°, les droits et les devoirs des neutres à l'égard des belligérants, et dans les deux sortes de guerre qui peuvent se rencontrer, guerre étrangère, guerre civile; cette dernière se subdivisant elle-même en deux espèces, guerre politique, ou de gouvernement à sujets, guerre de sécession entre deux portions déterminées du territoire. Cet ordre de relations prête à la même observation que le précédent. De même QUE LE PRINCIPE A FAIRE PRÉVALOIR ENTRE BELLIGÉRANTS, C'EST DE NEUTRALISER LE PLUS GRAND NOMBRE POSSIBLE DE CHOSES ET DE GENS, afin de rétrécir le plus possible le cercle des sévices de la guerre, ENTRE BELLIGÉRANTS ET NEUTRES, LE PRINCIPE DOIT ÊTRE LA PLUS GRANDE LIBERTÉ POSSIBLE DE CES DERNIERS. TOUTE GUERRE INTÉRESSE LES VOISINS QUI N'Y SONT PAS ENGAGÉS, TOUTE GUERRE LEUR

NUIT, EN LIMITANT LEUR COMMERCE, EN RUINANT LEURS CORRESPONDANTS, DÉTRUISANT OU DIMINUANT LE GAGE DE LEURS CRÉANCES ACTUELLES ET FUTURES, ET D'AUTRE PART, TOUTE GUERRE ÉTANT DE LA PART DE CEUX QUI LA FONT LE RÉSULTAT D'UN MANQUE DE PRÉVOYANCE OU DE MODÉRATION, IL FAUT EN ARRIVER A CONSIDÉRER LES BELLIGÉRANTS COMME DES GENS QUI SE SONT MIS EN FAUTE DANS UNE CERTAINE MESURE, A L'ÉGARD DU RESTE DE LA SOCIÉTÉ HUMAINE. Il est donc juste, et en même temps il est profitable à l'intérêt général que les neutres puissent conserver aussi exactement que possible, en dépit de la guerre, la plénitude des relations qu'ils avaient avant la guerre ou qu'ils auraient eues sans elle, avec les pays belligérants.

Les deux ordres de relations ci-dessus sont, disons-nous, *relativement* aisées à régler. Il est remarquable que des conflits, qui en relevaient, ont pu, dans ces derniers temps, être vidés, et pacifiquement terminés par des sentences d'arbitres, malgré leur gravité apparente. Ces succès ont certainement été dûs en grande partie à ce caractère particulier que nous signalions tout à l'heure, à ce trait que les vrais principes sont relativement aisés à trouver, et surtout à exprimer avec précision dans cette catégorie de faits. C'est assurément une confirmation de l'idée qu'un code international servirait puissamment l'établissement de la paix. Malheureusement on voit d'autre part, quand on parcourt l'histoire des guerres modernes, quand on examine leurs causes efficientes ou occasionnelles, on voit, disons-nous, que la plupart de ces guerres sont sorties d'événements qui se laissent difficilement réduire à des genres, à des espèces, et par cette raison se prêtent mal aux formules du législateur. On ne fait pas de lois sur des cas isolés, sur des faits singuliers, mais sur des catégories de faits. Essayons cependant le difficile travail de distribuer en classes les accidents si divers d'où peuvent naître les guerres ; mais ne nous attendons pas à pouvoir donner aux règles du code international, touchant ces matières, cet air de précision, ce cachet de stricte obligation que présentent les articles d'un code civil.

III.

DES PERSONNES COLLECTIVES APPELÉES NATIONS, ET DE LEUR INDÉPENDANCE LÉGITIME.—Il ne s'agit pas ici de savoir si un peuple peut porter l'usage de sa liberté naturelle jusqu'au point ou elle devient préjudiciable à un autre peuple, car cela ne saurait faire question; il s'agit de savoir si même dans les limites du juste un peuple sera libre de se mouvoir à sa fantaisie, sans considération pour les sentiments des peuples voisins.

A cet égard, il y a lieu de distinguer préalablement entre la *liberté extérieure* d'un peuple, et sa *liberté intérieure.* Ces expressions sont à notre avis assez claires par elles-mêmes; en tout cas elles le deviendront bientôt par la suite de la discussion.

LIBERTÉ EXTÉRIEURE. — Les principes, qui, suivant nous, doivent régir la matière, nous pourrions les énoncer sous une forme générale, abstraite; mais qu'on nous permette de les montrer, pour ainsi parler, en exercice et en action, c'est-à-dire servant à résoudre une des plus grandes difficultées qui soient en instance; par exemple : la question d'Orient. Il nous semble que cette manière de présenter les principes en démontrera mieux la justesse ou la fausseté.

Il y a là (nous voulons dire à l'Orient de l'Europe) une situation fort compliquée; une ancienne conquête contre laquelle le cours des choses tend à revenir; un peuple conquérant moins nombreux que les peuples conquis, et surtout moins intelligent, moins ouvert et perfectible, professant une religion pétrifiée, pratiquant des coutumes et des mœurs contraires à la civilisation chrétienne, issu d'ailleurs peut-être d'une race inférieure, peut-être réfractaire par nature aux progrès; et à l'alentour de cet état toujours près de sa dissolution, plusieurs grandes puissances peu d'accord entre elles, quant au partage des dépouilles, en sorte que la chûte de l'état Turc menace de se compliquer étrangement par l'explosion d'une querelle immense, où toutes les nations de l'Europe prendront part, soit de près, soit de loin. Essayons cependant de trouver quelque règle, rédigeable en articles, qui se puisse déposer dans le code international, pour servir, quand l'occasion viendra, à juger ce procès énorme; à

juger, disons-nous, d'une façon désintéressée, et pour l'avancement de la science uniquement, car il n'y a pas lieu d'espérer que ce procès soit déféré à l'arbitrage de qui que ce soit.

Il est certain qu'on pourrait en vue de ces événements inscrire dans le code, le principe que voici : AUCUNE POPULATION FORMANT UN ÉTAT OU L'UN DES ÉLÉMENTS D'UN ÉTAT, NE SERA ANNEXÉE, EN AUCUN CAS, A UNE NATION VOISINE, OU N'ENTRERA DANS UNE NOUVELLE COMBINAISON NATIONALE, SI CE N'EST VOLONTAIREMENT, ET D'APRÈS SON CONSENTEMENT CONSTATÉ DANS LES FORMES SUIVANTES. Et ici, le législateur aurait à faire un ouvrage malaisé qui ne serait pas moins que la détermination des moyens propres à révéler sérieusement la volonté des nations. Il se trouverait tout d'abord en face de la question du suffrage universel. Très-probablement, sinon sûrement il n'adopterait pas le suffrage universel, du moins sous la forme pratiquée en France, la considérant comme un procédé simplé jusqu'à la brutalité. Il ne nous appartient pas de dire quel mode de suffrage ou de manifestation il inventerait et prendrait à tâche de préconiser aux nations et aux gouvernements. Nous réléverons seulement les deux immenses difficultés qu'il rencontrerait ici sur sa route; la première nous l'avons déjà dit, serait de trouver un procédé de suffrage d'une sincérité incontestable ; la seconde de le faire accepter des parties intéressées.

Mais à supposer le principe du consentement des nations écrit dans le code international, et qui plus est, organisé ; la question d'Orient serait encore loin de pouvoir être théoriquement décidée. En effet, il serait fort possible que les populations soumises actuellement à la domination Turque, cette domination venant à tomber, voulussent, non pas former une ou plusieurs nations indépendantes, mais se réunir, soit en proportions inégales à diverses nations voisines ; soit en bloc à une seule, la Russie par exemple. Dans ce cas, il y aurait lieu de se demander si la volonté d'un peuple particulier est le seul intérêt à considérer, et si l'Europe, justement alarmée du surcroît de puissance qu'acquerrait la Russie par l'annexion des populations dont il s'agit, n'aurait pas à faire valoir contre l'annexion

de ces populations un intérêt légitime, respectable, aussi respectable que la volonté des populations.

Peut-être y a-t-il des esprits absolus qui répugneront à admettre ce droit de l'Europe et qui partiraient volontiers de la liberté illimitée de l'individu-peuple. Cette thèse n'est point recevable, pour peu qu'on admette, comme il le faut faire, QU'IL Y A ENTRE LES PEUPLES UNE SOCIÉTÉ NATURELLE, INDISPENSABLE AU PROGRÈS DE L'ESPÈCE. La libertée illimitée de l'individu, homme ou nation, est tout simplement de la barbarie.

Mais d'autre part, il y va de l'intérêt de chaque peuple et de l'intérêt de tous que l'individu-peuple exerce sa liberté avec autant d'ampleur que possible. On ne saurait le dire trop haut, ni trop souvent, LA LIBERTÉ DE L'INDIVIDU-PEUPLE COMME CELLE DES SIMPLES INDIVIDUS EST UN INTÉRÊT DE PREMIER ORDRE, POUR LUI D'ABORD ; ET ENSUITE POUR SES SEMBLABLES ; CAR C'EST LA CONDITION NÉCESSAIRE DU DÉVELOPPEMENT INTÉGRAL DE SES FORCES EN TOUS GENRES. En second lieu, il y a des raisons de penser que la constitution d'un grand peuple nouveau, par la réunion de peuplades jusque-là séparées, est en soi un fait grandement efficace, non-seulement pour le progrès de ces pleuplades, mais aussi, et par cela même, pour le progrès de toute la société européenne.

Mais quoi ! des considérations d'un ordre supérieur, viennent ici s'imposer à l'esprit, pour peu qu'il réfléchisse, qu'il prévoie ; et la nécessité fatale du changement, qui est une des lois assurément les mieux prouvées de la nature, apparaît dominant de haut cette question. A chaque instant de la vie générale, les groupes, les associations, les combinaisons existantes sont travaillées en dedans par des causes, plus ou moins visibles, qui tendent à les dissoudre et à en préparer de nouvelles. Le *statu quo* du monde est assurément la plus chimérique des utopies. Des nations qui occupent en ce moment la surface de la terre, ou de l'Europe, si l'on veut, il y en a qui sont destinées à grandir, d'autres à décroître, et qui sait peut-être, quelques-unes à disparaître, en tant que nations ; et c'est bien là précisément ce qui rend le problème de la paix si difficile. Combien incom-

parablement plus aisé il serait, si l'on pouvait fonder ses calculs, établir son plan sur la conservation du *statu quo* ; mais quel esprit serait assez peu pratique pour négliger dans la combinaison de ses mesures, un élément aussi énorme que la fatalité du changement ?

Impossible par toutes ces raisons de dire d'avance : aucune annexion, aucune combinaison nouvelle de peuples jusque là séparés, n'aura lieu que du consentement de la société européenne. Ce serait trancher d'une manière uniforme, inflexible, et sans égard aux conjonctures diverses, une question qui, selon les conjonctures, voudra être résolue diversement ; ce serait déclarer que les aspirations les plus légitimes d'un peuple devront céder en tout cas à la volonté collective des autres, même quand ceux-ci obéiront à des sentiments de jalousie, de haine, ou à des vues d'une prudence étroite et naturellement ombrageuse ; ce serait enfin presque décréter le *statu quo*.

Ainsi à la suite du principe énoncé plus haut, touchant l'assentiment obligatoire de l'individu-peuple, pourrons-nous écrire tout au plus celui-ci : NÉANMOINS LA VOLONTÉ DU PEUPLE OU DES PEUPLES INTÉRESSÉS NE SUFFIRA PAS. LA SOCIÉTÉ EUROPÉENNE DEVRA ÊTRE CONSULTÉE. Mais aller plus loin ; et dire dans quels cas la volonté de l'individu-peuple devra prévaloir ; dans quels cas au contraire la volonté de l'Europe, c'est ce qui nous semble impossible ; tout ce qu'il y a de faisable, à notre avis, c'est de poser des principes.

La société européenne, pour si haute et si puissante personne qu'elle puisse être, n'a pas le droit de tout faire ni d'exiger en toute occurrence qu'on s'incline devant elle. Comme tout être vivant, elle est tenue elle-même à respecter la justice, et ce qui est la même chose, la liberté légitime de l'individu-peuple. Nous la soumettons donc théoriquement à l'obligation commune de plaider sa cause devant le tribunal international, quand ses visées seront en conflit avec celles d'un peuple particulier. Mais en fait, le cas échéant qu'adviendra-t-il de la théorie ? C'est ici qu'un ami de la paix, s'il a des illusions, s'il s'est laissé aller à considérer comme facile l'établissement de la paix perpétuelle,

doit voir clairement tout ce qu'il y a de difficultés graves et de menaces formidables au fond de l'ordre actuel, contre la réalisation de nos espérances.

A un autre point de vue, il doit voir également combien il est avantageux de conserver à notre tribunal international le caractère d'un tribunal d'arbitres, dirigé sans doute par des principes, mais non lié par les règles strictes d'un code détaillé—d'ailleurs impossible dans une certaine mesure, comme nous l'avons déjà dit et répété—en sorte que cette impossibilité ne doit lui laisser vraiment aucun regret grâce en effet, au caractère en question, il sera loisible au tribunal international de peser dans chaque cas l'intérêt légitime des individus-peuples et celui de la société européenne, de déclarer quel intérêt doit prévaloir dans les conjonctures données; ou ce qui sans doute aura lieu plus souvent, de les concilier, de les satisfaire à demi tous les deux par une de ces transactions qui sont le fond de la politique, pour ne pas dire celui de la sagesse humaine.

Il appartiendrait au tribunal des arbitres de trouver des combinaisons propres à vaincre la résistance générale aux aggrandissements utiles ou inévitables des peuples, en ôtant à ces aggrandissements ce qu'ils pourraient avoir de menaçant et d'offensif, pour ne leur laisser que leurs effets salutaires. Ne serait-il pas possible par exemple, d'imposer comme condition indispensable d'un accroissement national une diminution proportionelle des forces militaires, la réduction de l'effectif à un un chiffre d'hommes déterminé, la démolition de certaines forteresses, ou l'interdiction d'en élever sur certains points, etc. Nous ne nous dissimulons pas, le difficile ne serait pas précisément d'obtenir ces conditions; mais de les faire observer sincérement. Mais n'y a-t-il pas de tous côtés des difficultés; et la plus grande n'est-elle pas, en somme, de maintenir la proportion actuelle des forces nationales, d'où il résulte que le monde est condamné sûrement à voir des diminutions et des aggrandissements inévitables ?

On a fait grand bruit, il y a quelques années, d'un prétendu principe des nationalités, qui était, suivant quelques-uns, appelé

à renouveler la théorie des rapports internationaux. D'après ce principe, les peuples parlant la même langue seraient destinés à ne former qu'une seule nation ; ce serait pour eux une sorte de fatalité naturelle, et un droit à l'égard de l'Europe, laquelle devrait les laisser faire, sinon les aider. On ne s'expliquait pas d'ailleurs très-clairement sur le point important de savoir, si le droit résultant de la communauté de langage allait ou n'allait pas jusqu'à permettre à un peuple de s'annexer un autre peuple, contre la volonté de celui-ci, sur le prétexte de la langue commune. Pour mieux dire, certains propagateurs du principe nouveau l'entendaient en ce sens ; d'autres y mettaient la condition expresse de l'assentiment des populations. Ces derniers étaient seuls dans le vrai, ou plutôt approchaient seuls de la vérité; mais ils ne s'apercevaient pas qu'au fond, le principe des nationalités, soumis à la condition de la volonté des peuples n'était plus ce qu'ils s'imaginaient; c'était un tout autre principe, celui-là même que nous avons formulé plus haut: que les peuples, ont seuls le droit de disposer d'eux-mêmes. Assurément c'est là une vérité destinée à faire son chemin dans le monde moderne, mais toutefois, nous l'avons vu, ce n'est qu'une demie vérité. Une autre plus large, sinon plus haute, contient celle-ci et la tempère : C'EST QUE LES PEUPLES ÉTANT ENSEMBLE POUR LEUR PLUS GRAND BIEN, DANS LES TERMES D'UNE SOCIÉTÉ NÉCESSAIRE, CHACUN A DES DEVOIRS A OBSERVER ENVERS TOUS ; c'est que nul n'est absolument libre d'agir à sa guise, sans égard pour les intérêts ou même les préjugés des peuples circonvoisins.

LIBERTÉ INTÉRIEURE. — PRINCIPE DE NON INTERVENTION. C'est un point dès aujourd'hui gagné que: CHAQUE PEUPLE POSSÈDE LE DROIT DE SE DONNER LE GOUVERNEMENT QUI LUI SEMBLE BON. Les révolutions intérieures d'un peuple, ses luttes intestines, ou les démêlés de ses populations avec son gouvernement ne peuvent autoriser aucun de ses voisins à s'immiscer dans ses affaires. A supposer que la presse, et la tribune même, chez ce peuple, propageassent habituellement des maximes politiques contraires à celles des nations voisines et reputées par elles plus ou moins dangereuses, ce ne serait pas encore là une cause

légitime d'intervention. Ce doit être un principe admis, en toute occasion, que la vérité suffit à se défendre et que les paroles ne justifient contre elles l'emploi des voies de faits, que quand elles ont commencées a se traduire elles-mêmes en actions.

Mais, si par exemple, des conspirateurs sortant du sein du peuple en question, font irruption fréquemment chez une nation voisine, obligeant le gouvernement de cette nation à des mesures de surveillance constantes ; et que le gouvernment du premier peuple ne puisse ou ne veuille couper court à ces tentatives ? (C'est en quelque manière le cas de certains états italiens en 1831). Il nous semble impossible de porter sur cette espèce, une décision générale, applicable à tous les faits, sans égard pour leur variété. Tout ce qu'on peut dire à notre avis, c'est d'une part QUE LE GOUVERNEMENT COMPLICE DES CONSPIRATEURS SERA TENU D'INDEMNISER LES GOUVERNEMENTS QUI AURONT SOUFFERT PAR SON FAIT; MAIS QUE D'AUTRE PART CETTE JUSTE RÉPARATION NE SAURAIT JAMAIS ALLER JUSQU'A DONNER POUVOIR A CES GOUVERNEMENTS DE CONQUÉRIR LE PEUPLE RÉVOLUTIONNAIRE OU DE LUI IMPOSER UN GOUVERNEMENT DE LEUR CHOIX. Mais quoi ! Si chez ce peuple en ébullition, aucun gouvernement ne peut se constituer assez fort pour empêcher les entreprises des particuliers ou d'une partie du peuple contre les voisins ? Ceux-ci ne seront-ils pas autorisés à employer la force contre la nation turbulente, pour la ramener par la contrainte à un genre d'existence moins nuisible à elle-même et aux autres ? Il faut se rappeller que ce prétexte spécieux a servi à colorer le démembrement de la Pologne. Un peuple turbulent, révolutionné à chaque instant, cela s'est vu et peut se voir encore, ou pour mieux dire, cet état doit être considéré comme une de ces maladies, une de ces phases critiques par lesquelles l'individu-peuple est sujet à passer à certaines heures de son développement social. Elles ne donnent à personne le droit de l'anéantir; bien qu'elles puissent constituer pour les voisins une grave incommodité. Cette incommodité, il faut la souffrir ; il y va des plus sérieux intérêts de l'humanité de laisser un peuple ainsi fait, traverser librement sa période morbide et revenir peu à peu à la

santé, par ses seules forces naturelles. Toute intervention extérieure, autre que celle d'un conseiller bienveillant et attentif à ménager l'amour-propre du patient, ne peut que rendre le mal plus aigu et plus dangereux ; comme ce fut le cas en 1792, quand les puissances allemandes, sans d'ailleurs être résolues à faire la guerre à la France, se montrèrent imprudemment disposées à intervenir dans ses dissensions intérieures. Un peuple en révolution n'est pas un spectacle contagieux pour les autres, à moins qu'ils n'aient de bien mauvais gouvernements, il serait plutôt fait pour les porter à exagérer dans le sens autoritaire et conservateur, comme il arriva notamment à l'Angleterre en 1793. Tous les dangers sérieux résultant de l'existence d'un peuple en révolution intérieure se réduisent donc pour les voisins à des incommodités, telles par exemple que les irruptions de conspirateurs, de clubistes ou d'insurgés, qu'il sera toujours aisé de désarmer, d'interner ou de renvoyer. Ce sont, il est vrai des soins et surtout des dépenses ; mais il serait à notre avis, possible et juste que : LA NATION CHARGÉE DE CES FRAIS PAR LA FATALITÉ NATURELLE DU VOISINAGE, OBTINT DES AUTRES NATIONS D'Y CONTRIBUER DANS UNE CERTAINE MESURE, COMME A UNE DÉPENSE D'ORDRE GÉNÉRAL ET D'INTÉRÊT EUROPÉEN. Tels sont, à notre sentiment les principes que le tribunal des arbitres aurait à faire prévaloir dans ce genre d'affaires, qui n'est pas des plus aisés, assurément ; principes qu'on pourrait aussi insérer dans le code international, sous la forme que voici (ou une autre équivalente).

1. Tout peuple est libre de se donner le genre de gouvernement qui lui convient.

2. Les incommodités résultant pour les voisins de l'état révolutionnaire d'un peuple ne peuvent aucunement légitimer la conquête de ce peuple ou l'imposition, à main armée, d'un gouvernement que ce peuple ne voudrait pas. Elles pourront seulement donner lieu à des demandes d'indemnités au profit des nations qui les auront souffertes.

Cependant faut-il admettre qu'une nation doive jouir d'une liberté illimitée à l'égard des autres, quant à son régime

intérieur. Pourrait-elle se fermer chez elle, réserver l'usage de ses fleuves, de ses ports à ses seuls nationaux, consigner à ses frontières les commerçants et les voyageurs étrangers, dérober à la connaissance d'autrui dans la limite du possible ses agissements intérieurs ? Faut-il en un mot reconnaître le droit à l'isolement ?

C'est un parti inadmissible à première vue. Mais faut-il admettre, en sens inverse, que la societé européenne ait un droit de prohibition, d'injonction sur les usages, les pratiques de ce peuple en matière politique, ou économique, ou sociale ? Ce principe, sous cette forme absolue, n'est pas plus de mise que l'autre. Ici, comme en tant d'autres occasions, il faut chercher un accommodement, une transaction, un *modus vivendi* entre deux intérêts, entre deux droits. Remarquons d'ailleurs que nous avons déjà soustrait à l'immixtion européenne la liberté politique des individus-peuples. Quant à leur régime commercial, au contraire, nous pencherions plutôt à favoriser l'intérêt général. Nous voudrions voir déposer dans le code international ce principe :

AUCUN PEUPLE N'EST AUTORISÉ A PROHIBER LA SORTIE DES DENRÉES OU OBJETS MANUFACTURÉS DE PROVENANCE INDIGÈNE NON PLUS QUE L'ENTRÉE SUR SON TERRITOIRE DES DENRÉES ET OBJETS MANUFACTURÉS, DE PROVENANCE ÉTRANGÈRE. TOUS TARIFS PROTECTEURS AYANT PLUS OU MOINS LE MÊME EFFET DOIVENT ÉGALEMENT DISPARAITRE.

Mais avec ces correctifs immédiats :

NÉANMOINS LES ARBITRES CHARGÉS DE METTRE CE PRINCIPE EN APPLICATION, AURONT ÉGARD A L'ÉTAT DES IDÉES ÉCONOMIQUES RÉGNANTES DANS LES PAYS INTÉRESSÉS. ILS ADMETTRONT TOUS LES TEMPÉRAMENTS ET DÉLAIS NÉCESSITÉS, SOIT PAR LES MÉNAGEMENTS QU'ON DOIT MÊME AUX CONVICTIONS ERRONÉES ; SOIT PAR LES BESOINS MOMENTANÉS D'UNE INDUSTRIE NAISSANTE, LAQUELLE PEUT EXIGER POUR UN TEMPS L'EMPLOI DU SYSTÈME PROTECTEUR.

DES CONTRATS ENTRE LES NATIONS. — Les contrats entre les nations s'appellent plus généralement du nom de traités, mais la nature n'en est pas pour cela essentiellement et toujours dif-

férente. Un grand nombre des règles appliquées aux contrats des particuliers conviennent aux contrats entre deux peuples.

Ainsi d'abord les règles déposées dans le livre 3, titre 3, section V du code civil français, sur l'interprétation des obligations nous paraissent parfaitement susceptibles d'être appliquées à l'interprétation des traités.

Mais faut-il admettre, comme causes de rescision, dans cet ordre de faits, l'erreur, le dol et la violence. Passe pour les deux premières causes ; quant à la violence, c'est une redoutable question, en ce qu'elle ménerait à ne tenir aucun compte des traités conclus entre vainqueurs et vaincus. Un code international qui contiendrait à l'heure présente un seul article tendant à mettre en question la validité d'un quelconque des traités existant, serait une œuvre de guerre, plutôt que de paix. La prudence exige que le législateur parte de ce qui est, et que tous les résultats produits par les événements ACCOMPLIS, MÊME RÉCEMMENT, SOIENT CONSIDÉRÉS PAR LUI COMME PRESCRITS.

Mais pour l'avenir, quelle sera la décision du législateur à l'égard des traités de paix, de ces contrats, où d'ordinaire l'une des parties impose les conditions, tandis que l'autre les subit en ayant l'air de les accepter. Le législateur international, et à sa suite le tribunal des arbitres, jugeant d'après ses indications, considéreront-ils comme non avenus les résultats des guerres qui sans nul doute auront lieu encore ? Prétendront-ils effacer les traces des luttes qu'ils n'auront pas pu empêcher. Ce serait une conduite impolitique, imprudente ; et qui, sous couleur de maintenir contre la force le droit dans toute sa rigueur, nuîrait singulièrement à l'établissement du droit. Rappellons nous toujours qu'un législateur, surtout international, n'est pas un théoricien pur, et que sa tâche consiste à trouver entre le fait et le droit absolu une transaction nécessaire, qui sera la base de transactions futures, de plus en plus conformes à l'idéal.

Cependant il est indispensable d'autre part que le législateur édicte dans son code les principes destinés à modifier peu à peu la pratique dans le sens du droit. Il s'agit pour lui d'une

transaction, et non d'une concession entière à l'empire régnant de la force. A la suite de la règle que voici : LE TRIBUNAL DES ARBITRES OU TOUT AUTRE JUGE SAISI D'UNE DIFFICULTÉ RELATIVE A L'EXÉCUTION D'UN TRAITÉ DE PAIX, DEVRA SE TENIR AUX TERMES DU TRAITÉ, SANS RECHERCHER SI LES OBLIGATIONS QU'IL RENFERME ONT EU POUR CAUSE ET POUR ORIGINE LA CONTRAINTE ; le législateur international devrait donc, suivant nous, ajouter aussitôt celles-ci :

TOUTEFOIS, COMME LES PUISSANCES EUROPÉENES ICI NOMMÉES (SUIVRONT LES NOMS) SONT RÉELLEMENT ET SÉRIEUSEMENT INTÉRESSÉES DANS TOUTE GUERRE ENTRE DEUX QUELCONQUES D'ENTRE-ELLES, ALORS MÊME QU'ELLES NE PRENNENT POINT DE PART A LA GUERRE, TOUT TRAITÉ DE PAIX CONCLU UNIQUEMENT ENTRE LES BELLIGÉRANTS, ET NON SIGNÉ DES PUISSANCES EUROPÉENNES EST IMPARFAIT, COMME UN ACTE PASSÉ EN L'ABSENCE DE LA PLUPART DES INTÉRESSÉS. UN PAREIL TRAITÉ NE SAURAIT VALOIR, AUX YEUX DES ARBITRES OU DE TOUT AUTRE JUGE INTERNATIONAL, EN TANT QU'IL CONTIENDRAIT CESSION DE TERRITOIRES DE LA PART D'UNE DES PARTIES EN FAVEUR D'UNE AUTRE. DANS LE CAS OU IL S'AGIRAIT DE TERRITOIRES HABITÉS, UN TRAITÉ DE PAIX MÊME SIGNÉ DE L'EUROPE, NE SAURAIT VALOIR QUANT A LA CESSION DESDITS TERRITOIRES SANS LE CONSENTEMENT CONSTATÉ EN FORME DES POPULATIONS HABITANT CES TERRITOIRES.

Par ces dispositions, les nations seront prévenues que le tribunal des arbitres reconnaît les traités de paix dans certaines limites ; mais qu'il n'entend pas donner à toutes les suites des guerres le bénéfice d'une consécration légale. Il est des principes sur lesquels ni un législateur ni un tribunal ne peuvent transiger, sans se suicider moralement. Le démembrement du vaincu par le vainqueur est absolument inadmissible ; c'est un spectacle qui fait la honte des peuples, agents ou témoins impassibles. La raison d'ordinaire mise en avant par le vainqueur, c'est qu'il a des précautions légitimes à prendre contre les retours offensifs du vaincu. Cette raison, qui n'est qu'un prétexte, serait à jamais écartée, si l'Europe, forte de son droit

réel à s'immiscer dans tout traité de paix, prétendait n'en laisser conclure aucun, sans y concourir. Il serait alors facile aux puissances européennes de couper court aux appréhensions vraies ou simulées du vainqueur, en l'assurant par traité de son assistance contre une nouvelle aggression du vaincu, à certaines conditions nettement déterminées. Le concours de l'Europe à tout traité de paix aurait ainsi pour résultat de réduire les suites des guerres à des indemnités pécuniaires dues par l'un des belligérants à l'autre.

DES CONQUÊTES EXTRA-EUROPÉENNES. — Il semble que les nations européennes, et en particulier les nations anglaises et allemandes soient destinées à occuper les espaces vides sur la surface de la terre, à pénétrer par émigration, infiltration, un grand nombre des peuples extra-européens qui nous sont inférieurs en génie ou en civilisation ; à soumettre les autres à un ascendant plus ou moins impérieux. Ce lent et progressif débordement des peuples d'Europe sur les autres parties du monde peut donner lieu, entre ces peuples, à des rencontres, et à des conflits sur des théâtres lointains, soit pour l'occupation de territoires vacants, soit pour la domination de nations subalternes. Il suffit de rappeler ici les guerres des Français et des Anglais, au Canada, dans les Indes-Orientales ; et tout récemment, sous Louis-Philippe, les péripéties de l'affaire Pritchard, pour qu'on se représente exactement ce que cet ordre de relations renferme de dangers pour la paix. Il se prête d'ailleurs assez bien, disons-le tout de suite, soit à l'emploi de l'arbitrage, pour terminer les conflits une fois nés, soit à la rédaction d'articles propres à règler d'avance la solution des conflits à naître.

Tentons ce dernier ouvrage. Il nous semble que les principes à adopter pourraient être formulés en ces termes :

"TOUT TERRITOIRE VACANT DEVIENDRA LA PROPRIÉTÉ LÉGITIME DU PREMIER OCCUPANT, A LA CONDITION QUE L'OCCUPATION SOIT SÉRIEUSE, ET NE CONSISTE PAS UNIQUEMENT DANS UNE PRISE DE POSSESSION NOMINALE."

Il serait nuisible à l'intérêt de la société européenne, et

de l'espèce humaine qu'un peuple, mu par une ambition déréglée ou par une crainte jalouse de la grandeur d'autrui, s'empressât d'occuper plus de terres que ses moyens ne lui permettent d'en coloniser et d'en faire valoir. Et en sens contraire, L'INTÉRÊT GÉNÉRAL VEUT QU'ON LAISSE S'AGGRANDIR AU LOIN LES NATIONS QUI ONT EN ELLES CE QU'IL FAUT POUR PRODUIRE DES COLONIES PROSPÈRES OU SEULEMENT VIABLES. Mais ce principe posé, principe qui subordonne à l'intérêt de la civilisation les méfiances des peuples les uns contre les autres, irons nous plus avant? Essayerons-nous de tracer ici des règles détaillées, par lesquelles le tribunal des arbitres jugerait en quel cas l'occupation d'un territoire est valable, en quel cas elle ne l'est pas? Ce serait sans doute excéder notre sujet; en tout cas ce serait trop présumer de nos forces; et peut-être l'ouvrage se trouvera-t-il être impossible à exécuter avec un degré suffisant de précision. Il y aura toujours là, ce nous semble, une question de fait qui devra rester à l'appréciation des arbitres.

Quant aux territoires déjà occupés, aux peuples conquis ou soumis à une clientèle plus ou moins étroite par quelqu'une des nations européennes, les principes à admettre sont, pensons-nous, les suivants : D'ABORD IL FAUT RESPECTER LES SITUATIONS ACQUISES; et par là, on doit comprendre non-seulement qu'aucun peuple européen ne disputera à un autre, les armes à la main, la domination ou le patronage qu'il a réussi à établir sur quelque nation extra-européenne; mais encore que le premier ne fera rien qui rende difficile ou périlleux au second, le gouvernement de la nation soumise. Il est possible, et cela s'est vu, que le peuple européen conquérant pressure, exploite la nation conquise; qu'infidèle aux devoirs des races plus civilisées à l'égard de celle qui le sont moins, il use de sa domination pour son avantage exclusif; en ce cas que décider? DANS L'ÉTAT ACTUEL DE L'EUROPE, AUCUNE NATION N'A QUALITÉ POUR PRENDRE EN MAIN (PAR LES ARMES, CAR L'INTERVENTION PACIFIQUE, L'INTERCESSION N'A RIEN QUE DE LOUABLE) LE PARTI DE LA NATION OPPRIMÉE; aucune n'est en droit d'assumer le rôle impolitique, dangereux, de chevalier errant des nations, de redresseur des torts; d'autant

que ce personnage est, et doit être à bon droit suspecté. L'expérience à prouvé que les peuples dévient encore plus vite que les individus dans ce chemin hasardeux ; et que les défenseurs, les sauveurs de la veille sont gens fort onéreux pour leurs obligés dès le lendemain. La Révolution française (pour ne pas citer d'exemples plus récents) a malheureusement trop bien démontré cette vérité. Et puis, il faut le dire, les peuples européens sont à l'égard les uns des autres, dans des rapports, dans des liens particuliers ; assurément tous les hommes sont parents ; l'humanité est une grande famille ; mais jusqu'à nouvel ordre, il faut tenir la parenté des Européens entre eux comme plus prochaine, plus étroite ; et partant, le maintien de la concorde entre eux doit être considéré comme plus désirable, plus précieux à tous les points de vue, qu'aucun autre intérêt. Rien d'ailleurs ne serait être aussi profitable à la longue, pour toute la race humaine, que cette concorde des peuples européens* qui sont incontestablement les aînés (au sens intellectuel), les guides, et les initiateurs de la race.

Si donc quelque peuple d'Europe abuse de son pouvoir sur quelque malheureuse nation extra-européenne, il n'y a jusqu'à nouvel ordre qu'un recours possible; il faut en appeler à l'opinion publique et attendre que son influence puissante ramène à une politique plus chrétienne, en même temps que mieux avisée, le le peuple-frère qui est sortie de la bonne voie.

Mais si la conduite de ce peuple préjudicie, en même temps, aux intérêts des nations d'Europe ; si, par exemple, il retient à lui, en marchand jaloux, tous les avantages du commerce avec les peuples qu'il a soumis ; s'il ferme absolument ce marché ; s'il se maintient en possession exclusive de livrer à l'Europe quelque denrée nécessaire ou très-utile, dont il élève le prix arbitrairement ? En ce cas il y va d'un intérêt qui relève positivement du tribunal dès arbitres. C'est une cause dont le juge-

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* Nous entendons ce mot au sens large, comme synonyme de chrétien, si l'on veut ; ainsi, pour nous, les américains du nord, les brésiliens et les citoyens des diverses républiques chrétiennes de l'Amérique du Sud, rentrent dans la société européenne.

ment lui appartient. Dans cette sorte d'affaires, le tribunal aura à chercher quel régime pourrait assurer, non des avantages égaux aux autres nations, mais procurer à la société européenne les bénéfices, les commodités qu'elle est en droit d'attendre, tout en réservant à la nation conquérante un traitement particulièrement avantageux, qui la rémunère comme il est juste des frais et des dépenses de toute sorte résultant pour elle du gouvernement de sa conquête. Il est inutile de dire, car cela se voit du reste, combien délicat est un problème de ce genre. Il consistera surtout dans la juste appréciation, et dans la pondération d'un grand nombre de faits politiques, économiques, et exigera principalement une connaissance profonde, philosophique des lois de l'histoire, et des lois de l'économie politique.

Mais le législateur international, qu'aura-t-il à faire ; et quel sera sa part dans le réglement de cet ordre de faits ? Il ne pourra inscrire dans son code que des principes larges, comme par exemple ceux qui suivent :

1° La domination d'un peuple civilisé sur un peuple qui l'est moins, ne peut se maintenir en droit, que si elle s'exerce d'une manière profitable aux dominés, comme aux dominateurs ; et a pour fin principale d'amener les premiers a un degré supérieur de civilisation.

2° Le devoir du peuples civilisé, a l'égard de la société générale des peuples, dans le cas supposé précédemment, consiste a rendre sa domination plus avantageuse au commerce général que n'aurait été l'indépendance du peuple soumis.

Le code international, nous l'avons déjà dit plusieurs fois, et nous le répétons ne sera composé, pour un grand nombre de ses chapitres, que de règles semblables, très-générales et partant un peu vagues, bonnes à guider de loin dans la pratique, à la façon des vérités primordiales de la morale ou des beaux-arts.

Cette partie du code dont nous venons de tracer les linéaments généraux répond en quelque manière à ce qu'est le code civil dans les législations nationales ; ce qui va suivre correspond à ce qu'est dans ces législations le code criminel.

IV.

Crimes et Délits Internationaux. — *Offenses faites aux représentants d'une nation par les agents publics d'une autre nation.*—Le tribunal dans cette sorte d'affaires, aura à apprécier: 1° S'il y a eu réellement offense; 2° Dans le cas de l'affirmative, quelle réparation sera due. Mais quant à l'œuvre du législateur international, est-il possible, et en second lieu est-il utile de définir et de diviser en classes les faits de nature offensante qui se peuvent prévoir dans l'ordre des relations internationales; comme on a défini et classé, par exemple, dans le code criminel français, les faits nuisibles de particulier à particulier? Si on adoptait ce parti, on serait conduit sans doute à créer parallèlement aux offenses une série de réparations graduées. Mais, à notre avis, ce travail difficile qui resterait toujours bien loin de la perfection, ne présente pas une réelle utilité, et peut-être entraînerait-il de graves inconvénients. Les nations ne sont pas des justiciables ordinaires. Le tribunal international, en jugeant leurs débats, et particulièrement ceux relatifs à des procédés offensants, fera toujours sagement, ce nous semble, d'avoir égard aux temps, aux circonstances, aux relations antécédentes des partis, à mille choses enfin, dont il lui sera impossible de tenir compte, s'il est lié par les articles rigidement déterminés d'un code écrit.

Mais ce que le tribunal devra (en tant que guide de l'opinion publique) s'appliquer à introduire, à établir dans les esprits; c'est l'idée que jamais UNE NATION NE DOIT SE BATTRE POUR UNE OFFENSE, LUI REFUSA-T-ON RÉPARATION; et que dans ce dernier cas, le déshonneur n'est pas pour la nation offensée, mais pour celle qui offense, et qui aggrave encore sa faute, en ne voulant pas la corriger. Assurément, le duel, si absurde aux yeux des hommes raisonnables, est chose sensée quand on le compare à la guerre entreprise au nom du point d'honneur, au duel entre deux peuples. L'intention d'insulter un peuple est, chez un individu, si haut qu'il soit, un trait de sottise, qui vaut à peine qu'on le raille et qu'on le dédaigne.

Vexations ou spoliations exercées sur des étrangers par les agents d'une nation ou par les particuliers de cette nation, sans que les individus spoliés ou vexés puissent obtenir réparations, ni leur gouvernement réclamant pour eux Ce cas s'est présenté plus d'une fois. Il a été la cause ou le prétexte de la dernière guerre de la France contre le Mexique. Il est à prévoir que cette situation se reproduira encore, sinon entre les nations civilisées de l'Europe, au moins entre quelqu'une de ces nations et certains peuples arriérés ou dépourvus de gouvernements stables, que nous pourrions nommer soit en Amérique, soit dans les autres parties du monde. Les riches commerçants étrangers sont et peuvent être pour des gouvernements besogneux convaincus d'ailleurs de leur instabilité, une proie tentante, en leur offrant la chance d'un gain immédiat au prix de dangers éloignés, et partant incertains à leurs yeux, ou qu'ils savent en tout cas ne devoir pas tomber sur eux personnellement.

En supposant que le tribunal se voie déférer le jugement d'un conflit de cette espèce, le principe qui lui servira à former sa décision et que nous supposons inscrit préalablement au code international sera celui-ci : LE TRIBUNAL DEMANDERA QUE LES ÉTRANGERS LÉSÉS SOIENT RESTITUÉS DANS LE TRAITEMENT QU'AURAIENT OBTENU A LEUR PLACE DES INDIGÈNES, D'APRÈS LES LOIS DU PAYS. Il ne demandera pas plus ni moins. Un étranger allant s'établir ou commercer chez un peuple, ne peut pas prétendre à trouver chez ce peuple les lois de son pays, ou a les y apporter, afin qu'on les lui applique personnellement. Sauf, bien entendu, l'existence d'un traité international garantissant à l'étranger en question un traitement déterminé ; il est clair QU'ALORS LE TRIBUNAL CONCLUERA A L'OBSERVATION DU TRAITÉ.

Mais quoi ? Si le gouvernement du pays supposé est absolument mauvais ; si les sujets des pays manquent de toute espèce de garanties et sont ordinairement l'objet d'avanies et de crimes, même de la part de leurs gouvernants ? Les gouvernements réguliers de l'Europe devront-ils prendre leur parti de voir

leurs nationaux traités, ni plus ni moins, comme des indigènes? Il ne s'agit pas de savoir s'ils ne doivent pas user de toutes les ressources de la diplomatie, épuiser tous les moyens pacifiques pour obtenir à leurs nationaux un traitement meilleur, car cela ne peut pas évidemment faire question ; mais de savoir, si ces voies épuisées, ils se résigneront plutôt que de faire la guerre ou s'ils feront la guerre, plutôt que de se résigner. Ou pour mieux dire, il s'agit de savoir si notre tribunal fera prévaloir dans la mesure de ses forces et de son pouvoir, le principe que les gouvernements européens doivent se résigner à voir leurs nationaux, demeurant ou voyageant dans les pays d'arbitraire, devenir victimes des barbaries que supportent les indigènes.

La décision de ce problème, un des plus délicats de la science des rapports internationaux, ne relève pas de la justice abstraite; mais de la politique. Il est certain d'une part que la crainte d'avoir la guerre avec une nation européenne contient dans une certaine mesure la volonté arbitraire de ces mauvais gouvernement dont nous parlons, et prévient souvent des sévices, qui, cette crainte ôtée, se multiplieraient dans une proportion inconnue. Mais d'autre part, il est certain que les guerres entreprises pour punir les mauvais gouvernements ont souvent coûté, en existences d'hommes et en argent, plus que ne devaient valoir tous leurs bons effets.

Nous pensons, en conséquence, que cette question comporte des solutions différentes suivant les conjonctures.

En certains cas le parti avantageux pourrait être de faire la guerre pour punir les crimes des gouvernements ou des peuples en question, afin d'en prévenir le retour. Il ne faut pas, par un esprit systématique, absolu, repousser le moyen extrême. Il n'est pas plus possible encore de désarmer absolument la civilisation au dehors, que la justice en dedans de chaque royaume, seulement ce devrait être un principe admis, porté au code international: QU'AUCUNE GUERRE DE CE GENRE NE SERA ENTREPRISE ET MENEÉ A FIN PAR UNE NATION ISOLEÉ. La raison en est que de pareilles entreprises, ainsi conduites, sont trop sujettes à dévier de leur but primitif, et à aboutir à

des conquêtes, qui à leur tour peuvent devenir un sujet de conflits ou de difficultés entre les nations européennes, temoin la conquête de l'Algérie par la France; et plus tard l'expédition du maréchal Bugeaud contre le Maroc. Le concours de plusieurs nations à des expéditions de ce genre est nécessaire pour prévenir tout danger: il a cet effet qu'il rend la guerre plus facile, et plus sûre pour tout le monde; il la limite et la maintient dans les bornes voulues.

En d'autres cas, il se pourrait que le parti avantageux fut l'inaction. LES GOUVERNEMENTS AURAIENT CONSÉQUEMMENT A AVERTIR LEURS ADMINISTRÉS QU'ILS COMMERCERONT DORÉNAVANT AVEC TELS PAYS OU Y VOYAGERONT A LEURS RISQUES ET PERILS, PARCE QU'IL EN COUTERAIT TROP A LEURS CONCITOYENS DE LES Y PROTÉGER OU DE LEUR PROCURER RÉPARATION.

N'y aurait-il pas moyen de ménager entre les nations civilisées des traités d'une certaine espèce, en vue de se garantir mutuellement contre les risques du commerce avec les nations arriérées dont il s'agit dans ce chapitre? Tous les commerçants des nations signataires de ces traités seraient considérés, à ce point de vue, comme membres d'une seule et même nationalité; en sorte que toute manque de foi, tout deni de justice infligé à un de ces commerçants et non réparé pourrait donner lieu à une saisie arrêt des biens et des créances appartenant aux citoyens de la nation réfractaire entre les mains de tous les commerçants de la ligue; ce qui, en étendant pour ainsi dire la surface vulnérable de la nation susdite, rendrait les représailles plus praticables et plus effectives dans la même proportion; toutefois, comme cette saisie amènerait sans doute en réponse, des mesures contre des nationaux européens épargnés d'abord, il serait utile de faire d'abord un compte, et de voir si l'emploi de cette arme ferait plus de profit que de dommage. Ce serait affaire aux gouvernements unis de prendre là dessus telle décision qui leur conviendrait, après enquête auprès des commerçants.

MOTIFS DE CRAINTE OU D'OMBRAGE DONNÉS PAR UNE NATION

A DES VOISINES.—Je prends, à titre d'exemple frappant, l'incident qui fut peut être moins la cause que l'occasion de la guerre de 1870, si terrible dans ses effets immédiats, si redoutable pour l'avenir de la civilisation européenne. Un parent du roi de Prusse parait tout à coup en voie de parvenir au trône d'Espagne, la France en prend ombrage ; et demande que le roi de Prusse défende à son parent l'acceptation de la couronne proposée sous une forme absolue, que le roi de Prusse refuse. Quelles règles rédiger en vue d'une situation de ce genre ? Remarquons d'abord que le cas n'était pas absolument singulier. Sans parler du petit-fils de Louis XIV, devenu roi d'Espagne sous le nom de Phillippe V, rappelons-nous la démarche des Belges en 1831, pour obtenir de Louis-Phillippe un de ses fils comme roi de Belgique ; et quelques années plus tard les négociations, les récriminations échangées entre la France et l'Angleterre au sujet des mariages espagnols. La prudence de Louis-Phillippe rendit la démarche dangereuse des Belges comme non avenue ; le second incident aboutit à un refroidissemont et non pas à une hostilité ouverte des gouvernements Anglais et Français, grâce à leur répulsion égale pour la guerre ; mais les choses auraient bien pu tourner autrement. A présent si visant ces événements qui dans une certaine mesure se ressemblent, et peuvent à la rigueur être consideré comme formant une espèce ou un genre, on prétendait les régler, comment s'y prendrait-on ? SANS DOUTE ON POURRAIT ARTICULER QU'AUCUN PRINCE APPARTENANT A UNE MAISON ROYALE, QU'AUCUN PARENT D'UNE MAISON ROYALE, JUSQU'A UN DEGRÉ DÉTERMINÉ, NE DEVRA ÊTRE RECU A DEVENIR ROI DANS UN PAYS EUROPÉEN, SI CE N'EST DU CONSENTEMENT DES NATIONS VOISINES; ON POURRAIT ENCORE DÉTERMINER EN TERMES SUFFISAMMENT PRÉCIS QUELS MARIAGES ENTRE PRINCES ET PRINCESSES NE SERONT PAS PERMIS, COMME CAPABLES DE PORTER OMBRAGE AUX PAYS VOISINS ; mais à peine aura-t-on terminé cet ouvrage, qu'on apercevra devant soi un champ extrêmement vaste, indélimité, une catégorie immense et vague de faits que nous appellerons, si l'on veut, causes d'ombrage entre les nations.

Quand nous avons parlé des difficultés insurmontables, selon

nous, qu'on trouverait à formuler des règles précises pour tous les faits internationaux, capables d'amener la guerre, nous pensions surtout à la classe de faits dont il s'agit ici, classe redoutable. Nous lui avons tout à l'heure imposé ce titre : causes d'ombrage ; mais n'y aurait-il pas lieu de lui donner encore un sous-titre qui signale le dessous obscur, le *substratum* redoutable sur lequel s'élèvent et s'appuient ordinairement les susceptibilités si dangereuses des nations à l'égard les unes des autres? Ce sous-titre serait : antipathies de race, haines nationales.

Quiconque étudiera attentivement l'histoire des guerres modernes sentira qu'il est ici devant la racine maîtresse de l'arbre de la guerre. L'ambition, le désir de s'accroître, la soif des conquêtes en un mot, était jadis cette racine principale. Sans avoir disparue entièrement, cette passion ne joue plus, et surtout dans un avenir prochain ne jouera plus le même rôle prépondérant. D'autre part, même quand elle agira, elle ne se présentera plus à découvert comme autrefois; elle mettra en avant ces défiances, ces griefs vagues, ces prétendues nécessités de conserver pour soi un ascendant légitime ou de combattre chez les autres un ascendant exagéré, lesquelles seront de plus en plus, à notre avis, les prétextes ordinaires du mal de la guerre. La conquête pourra suivre comme fait, comme indemnité de guerre; mais la prétention formelle de conquérir ne précédera pas, au moins ordinairement.

Impossible, avons nous dit, de prévoir, de définir les formes infiniment variées que pourra prendre l'humeur querelleuse des nations ; mais ce n'est pas une raison pour ne pas faire à cet égard ce qui se peut.

Une nation fait avec une autre nation un pacte d'alliance, dont les conditions sont cachées, en tout ou en partie, aux autres puissances ; ou bien elle augmente ses troupes, élève de nouvelles forteresses, perfectionne son outillage militaire, avec célérité et mystère ; ou bien encore elle se montre, dans ses rapports avec l'une de ses voisines, d'une susceptibilité imprévue, trouvant dans les moindres frottements des sujets de plaintes, de réclamation ; ce sont signes de projets guerriers. Les voisins

commencent à considérer avec appréhension le peuple chez qui ces signes (ou d'autres du même genre) se manifestent; ils commencent à prendre de l'ombrage. L'un d'eux, plus particulièrement menacé, fait prudemment des préparatifs; il arme à son tour. Arrivés à ce point, les deux peuples se regardent déjà en ennemis et la guerre peut éclater sur le champ. Si elle n'éclate pas, ce n'est que partie remise, à moins d'un incident nouveau, venant brusquement changer la situation, car attendre la guerre sur le pied de guerre, est chose irritante et surtout onéreuse. Si les deux peuples supposés ne désarment pas, il faut de toute nécessité qu'au bout d'un temps l'un se décide à attaquer l'autre; c'est ordinairement celui dont les finances sont plus courtes. Il se bat pour en finir avec une situation qui le ruine; et c'est peut-être sur quoi l'autre a compté. Nombre de guerres sont arrivées de cette manière; et c'est aujourd'hui un procédé connu, percé à jour, mais néanmoins immanquable ou à peu près par lequel une nation prospère peut en obliger une autre qui l'est moins, à lui déclarer une guerre, dont elle a eu seule la première pensée et le désir. Que faire pour prévenir cette situation? Quels articles rédigera-t-on en vue de la définir et de la juger? Essayons.

"AUCUN PEUPLE N'AUGMENTERA SES FORCES DE TERRE OU DE MER; NE CONCLUERA D'ALLIANCE OFFENSIVE OU NE FERA GÉNÉRALEMENT UN ACTE PROPRE A LE RENDRE MILITAIREMENT PLUS REDOUTABLE, QU'AVEC L'ASSENTIMENT DES NATIONS VOISINES." Ce que nous articulons ainsi n'est en somme et à le bien prendre que la formule de ce qui est actuellement pratiqué par la diplomatie européenne. Aucun peuple ne fait un des actes mentionnés dans notre article, sans que les autres y consentent ou sans avoir la guerre avec quelqu'un d'entre eux. Ainsi la diplomatie admet le même principe que nous. L'existence d'une societé entre les nations telle qu'aucune ne peut et ne doit agir avec une liberté entière, sans égard aux autres; que chacune doit compte aux autres de ses agissements intérieurs, dans une certaine mesure, est un fait si naturel, si nécessaire

que de très bonne heure les rapports des nations ont été fondés là-dessus, instinctivement d'abord et enfin en pleine conscience. Jusqu'ici les diplomates ont été chargés de maintenir et de faire observer les conditions dérivant de cet état de société. Nous ne répéterons pas ici les injustes et souvent absurdes préventions que des gens, peu au fait des choses, ont propagées contre les diplomates. C'est l'attache qu'ont les diplomates avec les gouvernements, c'est leur qualité d'agents, de fonctionnaires, et partant leur zèle obligé pour les intérêts particuliers des nations, même aux dépens des intérêts généraux de la société européenne qui fait leur faiblesse, faiblesse inévitable. Les mêmes hommes ne peuvent pas efficacement servir, nous l'avons déjà dit, un peuple particulier et la communauté des peuples. Contraints d'accomplir des demarches qui conduisent parfois à la guerre, ils sont naturellement discrédités dans une certaine mesure, et en tout cas toujours suspects d'arrière-pensées quand ils s'entremettent et agissent pour la paix. Cette situation inévitable, il faut le répéter, est précisement la justification absolue de notre entreprise. Conservons donc le principe que les diplomates ont reconnu les premiers ; mais créons pour son service un organe nouveau, exclusif, et par celà même nécessairement plus efficace.

LIVRE TROISIÈME.

La sanction.

I.

Il y a parmi les amis de la paix un courant d'idée autre, ou si l'on veut, une autre école que celle à laquelle nous appartenons. Cette école estime qu'il appartient aux gouvernements de dresser successivement, avec le temps et suivant les occasions, les articles du futur code international. Elle regarde les articles du traité de Paris de 1856 comme un chapitre de ce code, en même temps que comme un exemple du procédé à employer. De même suivant elle, il appartiendrait aux gouvernements de nommer, à frais communs, une cour chargée d'expliquer, de fixer, en cas de doute, le sens et la portée des articles précédemment arrêtés entre les diplomates. Enfin, il incomberait aux gouvernements de créer une force commune destinée à faire exécuter, au besoin par la guerre, les décisions de la cour internationale contre la nation qui après avoir souscrit aux articles convenues n'en voudrait pas supporter l'application.

Dans l'opinion de cette école, l'arbitrage n'est qu'un procédé empirique, d'une efficacité incertaine et très-limitée. Ce jugement trop sévère à l'égard même de l'arbitrage tel qu'il a été jusqu'ici pratiqué, ne vaut pas, à notre avis, contre le contrat préventif d'arbitrage, tel que nous l'avons expliqué au début de cet essai.

Assurément si les diplomates se réunissaient pour donner une suite au traité de Paris, il faudrait grandement s'en réjouir. Mais combien avons-nous de ces réunions de diplomates d'où soient sorties des résolutions qu'on puisse considérer comme articles du code international ? En bien cherchant, on en cite deux. 1°, Le traité de Paris; 2°, la déclaration commune à quelques nations d'Europe qui assimile la traite à la piraterie. Quand y aura-t-il une réunion de ce genre ? Et combien en

faudrait-il pour qu'une partie considérable du code international se trouvât ainsi rédigée? A la manière dont les choses ont marché jusqu'ici, il y a lieu de croire que nous devrions attendre une très longue série d'années, avant de voir l'ouvrage parvenu à ce point. Et puisque nous en sommes aux pronostics tirés de l'expérience déjà acquise, comptez en sens inverse, combien de fois, depuis cinquante ans, les gouvernements ont eu recours à l'arbitrage avec un plein succès! A en juger par l'expérience, tout l'avantage est pour le procédé de l'arbitrage, sans vouloir d'ailleurs exclure l'autre méthode.

Nous l'avons dit, et nous le répétons, la guerre a été les trois quarts du temps causée et le sera encore par des faits irréductibles à des classes, à des genres, partant impossibles à régler par voie de dispositions générales, par voie d'articles de code; ou bien ces articles (nous l'avons montré ici, en essayant d'en rédiger quelque-uns) seront d'une ampleur et d'une généralité telles, que, après leur rédaction, le plus délicat, le plus difficile restera à faire; c'est-à-dire, l'application à un cas donné. Aussi considérons-nous la réunion du tribunal, inter-gouvernemental qui, dans la thèse contraire à la nôtre doit suivre la réunion ou les réunions des diplomates, comme la partie la plus essentielle, la plus importante de cette thèse; mais c'est aussi la plus difficile à réaliser. Ce tribunal, formé par le concert des gouvernements, pour prendre un commencement d'existence, ne doit pas procéder uniquement de deux ou même de trois nations, il faut supposer à son origine le concert d'un certain nombre de nations. Et voilà précisément ou la difficulté est grande! Le concert de plusieurs nations pour fonder ensemble une institution permanente destinée à durer, mais c'est presque l'utopie de l'abbée de St. Pierre! La constitution de ce tribunal suppose l'accord préalable sur un grand nombre de points capitaux, un ensemble de vues communes; et l'expérience montre que les gouvernements ont déjà beaucoup de mal à s'accorder sur un point précis, restreint, tel que la façon d'envisager la traite des nègres, ou les droits des puissances neutres.

Supposons, si l'on veut, ce tribunal constitué. Sera-t-il nécessairement supérieur par les lumières et surtout par l'impartialité

à ce que serait, à ce que pourrait être le tribunal arbitral,* libre, indépendant des gouvernements, que nous avons proposé? Les gouvernements, c'est une vérité bonne à redire, sont les représentants nés de l'égoïsme légitime des nations. Il y a tout lieu de croire, que chaque gouvernement, en choisissant le membre du tribunal inter-gouvernemental auquel il aurait droit, suivrait ses inspirations ordinaires, céderait tout naturellement à la préoccupation de faire triompher dans le tribunal ou d'y faire défendre les vues de sa politique particulière. Le tribunal ne serait ni plus ni moins qu'un congrès de diplomates déguisés en juges; ce serait une réunion de personnes, animées d'un esprit réciproque de défiance, sinon d'hostilité, ayant des vues secrètes, et des arrière-pensées, et surtout suspectées d'en avoir, tant aux yeux les unes des autres, qu'aux yeux de l'opinion publique européenne. Sans doute l'ambition (ambition représentative) de chacun y serait balancée, contenue par celle de tous les autres; et la solution des difficultés aurait lieu ordinairement de cette manière que les visées (même légitimes) d'une des parties y seraient sacrifiées aux ombrages de toutes les autres; ce qui n'est pas, tant s'en faut, la même chose que de faire prévaloir l'intérêt général. Les brigues, les alliances plus ou moins secrètes entre quelques-uns, les oppositions ou les approbations systématiques de certains membres à l'égard de certains autres, enfin tout ce qui s'est vu jusqu'ici dans les congrès, se reverrait là d'une façon permanente, parce qu'au fond ce tribunal ne serait rien que l'ancienne diplomatie, autrement habillée.

A œuvre nouvelle, ouvrier nouveau. Il faut à l'intérêt général de la société européenne des organes autres que ceux qui sont et doivent rester les organes des intérêts particuliers de chaque peuple.

Imaginez la justice civile constituée de cette façon-ci: les plaideurs (c'est-à-dire ceux qui ont eu déjà et auront demain des procès ensemble) constitués en tribunal et se jugeant entre eux,

* L'opposition d'idées que nous avons voulu marquer par les termes de tribunal inter-gouvernemental et tribunal international ou arbitral, placés à côte l'un de l'autre, n'échappera, nous l'espérons, à aucun lecteur.

l'esprit tout plein de leur differents passés et de ceux qu'il auront demain ; et vous aurez dans cet ordre de justice, l'analogue du tribunal inter-gouvernemental.

Le juge civil est un tiers désintéressé, supérieur aux parties. Pour avoir un supérieur entre les nations, il n'y a, à notre avis, que deux moyens : ou qu'un gouvernement ait acquis la suprématie sur tous les autres (c'est un des rêves du passé, témoins la papauté et l'empire au moyen-âge), alors celui-là pourra être un juge parmi les autres ; mais si tous les gouvernements sont égaux, ce qui est la thèse moderne, il faut que notre juge soit d'abord pris en dehors de tous les gouvernements, et investi par une souveraineté étrangère, sinon supérieure à tous les gouvernements. Cette souveraineté existe et aussi réellement que les autres souverainetés, quoique sous des espèces moins visibles, moins matérielles, elle grandit d'heure en heure, et l'avenir lui appartient, c'est l'opinion publique.

Sans doute, celle-là n'a pas d'armée à ses ordres immédiats. D'ou il suit que les décisions de son juge n'auront pas de sanction régulière, désavantage immense sur le système du tribunal inter-gouvernemental, mais, à notre avis, désavantage purement théorique, tant que la constitution de ce tribunal et de la force publique y attachée ne seront pas sortis de la région des projets chimériques, ou il paraissent devoir rester à jamais ; à moins d'un changement immense dans les dispositions et les idées des gouvernements européens, qui, s'il arrive, et CE N'EST PAS IMPROBABLE, AURA LIEU PRÉCISÉMENT PAR L'INFLUENCE DU TRIBUNAL QUE NOUS PROPOSONS, ET DU SYSTÈME GÉNÉRAL DONT IL EST LA CLEF DE VOUTE*. C'est ici l'histoire d'un remède qui serait souverain, s'il était applicable, mais qui ne l'est pas ; tandis qu'il existe un palliatif qu'on a sous la main.

En somme, l'établissement du tribunal arbitral peut être amené, par un mouvement d'opinion qui est évidemment excitable, avec un peu de zèle et d'entente. Une fois établi, ce tribunal sera puissant, selon les lumières de ses membres, et selon

* Je prie le lecteur de faire attention à cette réserve, sans quoi il se tromperait sur le fond véritable de ma pensée.

l'énergie du vœu public pour la paix. Que l'institution commence petitement, c'est possible ; mais elle croîtra : et bientôt, elle aura infailliblement cette vertu, si elle n'en a pas d'autre, d'obliger les gouvernements à condescendre aux exigences de l'opinion publique réveillée, en faisant des actes témoignant de leur bonne volonté pour la paix. Alors auront lieu sans doute des réunions de diplomates et des essais de codification, comme en désirent les partisans de l'initiative gouvermentale ; alors, dis-je, mais pas avant.

Il est à croire de plus que les traités préventifs d'arbitrage seront toujours une voie plus rapide et plus facile. Un traité d'arbitrage n'a pas besoin de l'entente de toute l'Europe ; deux volontés y suffisent, c'est là un avantage incomparable. Un traité entre deux devient ensuite un traité entre trois, entre quatre ; ou bien il donne un exemple suivi par deux nations nouvelles, puis par d'autres. Ainsi la difficulté est morcelée, le problème se résout par portions successives ; le réseau de l'arbitrage se fait maille à maille et s'étend graduellement sur toute l'Europe. Sans doute, résoudre le problème en une fois et définitivement serait mieux, il ne s'agit que de savoir si ce n'est pas une chimère. Qu'on songe à ce qu'est actuellement l'Europe ! Non seulement il y a des différences profondes de régime entre ses parties, mais en réalité, les unes sont à tel degré de civilisation, les autres sont à un degré inférieur ou supérieur. Il ne se peut point qu'elle marche tout entière du même pas. Le système de l'arbitrage permet justement aux nations plus civilisées (les pays de régime représentatif) de passer devant et de montrer la route.

II.

Il faut voir à présent si les décisions de notre tribunal arbitral seraient aussi complètement dépourvues de sanction que nous l'avons concédé, plus haut, pour la clarté de la discussion.

Quand le tribunal des arbitres aura rendu un jugement, comment sera-t-il exécuté ? Il n'y a pas deux réponses possibles ; il sera exécuté par les parties de bon gré, ou il ne le sera pas du tout.

A supposer, (ce qui ne sera pas ou du moins ne peut se prévoir dans l'état actuel de l'Europe) à supposer que le tribunal des arbitres eut une force à sa disposition ; qu'il pût armer quelqu'un pour la soutenance de ses décisions, devrait-il mettre cette force en usage ? Faire la guerre au nom d'un tribunal institué pour le maintien de la paix, serait assurément une inconséquence étrange. Au bout d'un temps, l'institution se trouverait n'avoir produit de résultat bien positif, que celui d'avoir créé une nouvelle cause de guerre ; la guerre de la paix !

Ainsi les jugements du tribunal des arbitres n'auront pas de sanction, à entendre ce mot comme on le prend dans le droit civil des peuples, est-ce à dire qu'ils ne seront pas généralement exécutés ? Si l'on distingue entre les jugements portés spontanément par le tribunal et ceux rendus par lui sur l'invitation des parties intéressées (auxquels à la rigueur le tribunal pourrait se réduire) on peut dire que ces derniers seront au contraire respectés, accomplis par les parties, dans la très-grande majorité des cas. L'expérience, à cet égard, a déjà prononcé ; et tous les raisonnements, toutes les inductions autorisent à penser qu'on ne verra pas souvent une nation se refuser à exécuter, aux regards du monde entier, une sentence par elle demandée, provoquée, acceptée d'avance. Le point d'honneur, sans parler d'autres motifs, l'aménera à se soumettre presque toujours.

Faut-il dire toute notre pensée ? Supprimons-le presque. Ce sera toujours. Oui, à notre avis, il n'y aura que deux alternatives : une nation déférera ou ne déférera pas son procès au tribunal des arbitres ; mais quand elle l'aura déféré, elle ira jusqu'au bout et se soumettra à la sentence. Lorsqu'elle ne sera pas disposée à se soumettre, elle ne déférera pas ; et c'est là, précisément le point faible de l'ouvrage que les amis de la paix essayent d'élever. Ce qui est à craindre, ce n'est pas que les nations désobéissent au tribunal des arbitres, après lui avoir demandé sa décision ; c'est qu'elles ne la lui demandent pas ; c'est qu'elles continuent à se passer du tribunal et à vider leurs querelles à la vieille mode barbare, main contre main.

Donc le problème gît tout entier en ceci : amener les peuples

à déférer leurs querelles à un tribunal d'arbitres, celui que nous avons proposé ici, ou tout autre. Nous avons sommairement indiqué quelques moyens propres, à notre avis, à influer directement sur ce résultat. C'est ici le lieu d'exposer une combinaison capable d'agir indirectement sur les peuples pour les porter à adopter les traités d'arbitrages, ou à se soumettre docilement aux conséquences d'un traité d'arbitrage conclu par eux, en leur procurant dans les deux cas des avantages considérables. Cette combinaison est donc, par ce dernier effet, une sanction *sui generis*.

Partons de l'hypothèse que deux nations sont liées par un traité preventif d'arbitrage; l'œuvre de la paix est à moitié accomplie pour ces deux nations; elle ne l'est pas entièrement cependant; il appartiendrait au tribunal des arbitres de l'achever.

Ne pourrait-il pas s'entremettre pour amener ces deux nations à conclure un traité consécutif du traité d'arbitrage, conçu dans l'esprit suivant:

Les hautes parties contractantes N. et M. s'engagent à se défendre mutuellement contre les attaques d'une nation tierce aux conditions et modes ci-dessous exprimés:

1° La nation attaquée n'aura droit à réclamer les secours de son alliée, que dans le cas ou son territoire aura été envahi sans aggression de sa part, et qu'autant que la guerre aura son territoire pour théâtre. Dès que la guerre aura été transportée sur le territoire de la nation tierce, l'alliée ne sera plus tenu à aucun devoir de guerre.

2° Comme un pareil traité cependant ne doit être pour l'une ni pour l'autre des parties contractantes une tentation et un moyen de se donner des torts vis-à-vis d'une nation tierce et d'en refuser ensuite la juste réparation, si l'une des alliées a un conflit avec une nation tierce, l'autre alliée s'emploiera pour porter les deux contendants à remettre leur débat au jugement d'un tribunal d'arbitres; et si le refus d'accepter ce jugement ou bien de l'exécuter vient de l'alliée, l'autre alliée ne sera tenue à aucun devoir de guerre.

3° L'alliée menacée sera en droit d'exiger de son alliée des préparatifs et des mesures de défense, suivant les proportions

et selon les modes déterminés plus en détail dans les pièces annexées au présent traité, lesquelles déterminent aussi les forces de toute espèce que chaque alliée sera tenue de mettre en compagne dans le cas de guerre.

4° Les parties contractantes considérant que le présent traité à pour effet d'accroître la force défensive de chacune d'elles, par l'adjonction des forces de l'autre, décident qu'il y a lieu à réduire leurs armées respectives jusqu'à concurrence des chiffres suivants, etc.

Quand deux peuples seront liés ensemble par un traité de ce genre, chacun d'eux pourra réduire ses troupes de moitié; si un troisième adhère, ils les réduiront au tiers, et ainsi de suite. Voilà un premier et important résultat; mais celui qu'il faut sans doute priser le plus haut dans cette combinaison, c'est celui-ci : La pratique consciencieuse de l'arbitrage devient pour une nation une source efficace de force et de grandeur; elle lui procure des alliances, que, sans elle, cette nation n'aura pas ou qu'elle devra perdre.

Et cependant la force, venue de cette source, ne peut servir pour des desseins ambitieux. Le mode de transmission ne s'y prête pas.

Evidemment tout cela n'équivaut pas à la constitution d'une force cœrcitive, mise à la disposition du tribunal arbitral, pour forcer par la guerre les plaideurs récalcitrants. Mais on trouvera peut être cette lacune beaucoup moins regrettable, si on refléchit à la manière dont tournent trop souvent les guerres entreprises pour les motifs les plus justes. Ne faut-il pas à tout vainqueur des indemnités et des garanties pour l'avenir, indemnités en argent, garanties en forteresses ou en territoires enlevés aux vaincus. Plus on a eu une juste cause au début, plus à l'heure de la victoire on se croit autorisé à être exigeant. Qui peut dire comment finiraient ces *ligues du bien public*, ces repressions exécutées de concert par les nations sur l'une d'entre elles? Ce pourrait être une heure bien dangereuse pour les bonnes intentions des peuples que celle ou un de leurs voisins, vaincu à frais communs, dans une guerre injustement,

follement provoqué par lui, se trouverait à leur merci, impuissant et déconsidéré tout à la fois, n'inspirant ni crainte ni pitié.

Certes la constitution d'un pouvoir fort, absolu même, au sein de chaque état, à été jadis une phase utile, nécessaire au développement de l'humanité. Il a fallu des gouvernements armés d'un glaive irrésistible pour établir l'ordre, condition première de tous les progrès. Mais pour qui examine de près la chaîne des événements historiques, et suit, dans le bon comme dans le mauvais, les conséquences des grandes institutions, au prix de combien de maux les hommes n'ont-ils pas acheté l'ordre servi de cette manière par la force. Passons nous de la force, cette fois, si ce n'est pas tout à fait impossible, comme l'esprit nouveau des temps et le caractère particulier des rapports dont il s'agit tendent à le faire espérer.

A présent, faut-il nous résumer ? Ce serait sans doute une besogne utile ; mais prévenu trop tard du concours auquel nous sommes appelés, le temps nous manque. Nous nous bornerons à exprimer de nouveau, sous une forme brève et nette les quelques propositions contenues dans cet écrit.

Il faut établir au centre de l'Europe un tribunal, indépendant de tous les gouvernements, tribunal semi-juridique, semi-politique, ayant et conservant avec soin le caractère singulier d'une réunion d'arbitres et de médiateurs plutôt que celui d'une assemblée de juges. — On ne doit ni s'exagérer la possibilité de prévoir et de régler par avance en articles formels tous les rapports internationaux, ni l'avantage qu'il y aurait à le faire, si c'était possible. Certains rapports se prêtent par nature à ce genre de travail ; d'autres au contraire s'y refusent. — Charger le tribunal international d'édicter lui-même les règles précises d'après lesquelles il décidera, ou les maximes larges qui lui tiendront lieu de ces règles, dans tout un ordre fort important de procès — et à vrai dire, le plus important. — Eviter deux écueils ; d'abord celui de s'adresser aux gouvernements, de rêver leur concert et leur accord pour une œuvre sérieuse quelconque, secondement, celui de trop céder à l'esprit juridique, de ne voir dans l'œuvre laborieuse et compliquée qui nous occupe qu'un

code à faire, comme tous les autres codes, et un tribunal à établir, semblable au fond aux autres tribunaux ; tandis qu'il s'agit d'élever une construction tout à fait originale, d'un caractère particulier et complexe.

Les gouvernements feront peut-être un jour pour la paix des efforts qu'ils n'ont point voulu, ou su ou pu accomplir jusqu'ici ; mais ce n'est pas avant que l'opinion publique agissant d'elle-même, n'ait créé un organe pour ses réclamations, pour ses vœux ; un corps influent, dont l'exemple et l'ascendant mettent, bon gré malgré, les gouvernements en branle et en chemin. POUR QUE L'AVENIR NE RESSEMBLE PAS AU PASSÉ, IL FAUT INTRODUIRE DANS LE MILIEU ACTUEL UN ÉLÉMENT NOUVEAU DE CAUSATION. Le moment est opportun, l'heure semble venue.

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